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Susan C. Smith

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ABUSED CHILDREN WHO KILL ABUSIVE PARENTS: MOVING TOWARD AN APPROPRIATE LEGAL RESPONSE

Child abuse is an inordinately complex problem in the United States, with over one million children suffering from abuse or neglect annually.¹ Existing societal attitudes and inadequate responses from the social service and criminal justice systems contribute to the continued high incidence of abuse, and to parents taking the lives of over one thousand children each year.² For those children able to survive the abuse, research reveals that they are likely to suffer serious physical injuries, emotional trauma, or become future victims of abuse or perpetrators of violence against others.³ Sometimes, the years of abuse eventually culminate in children taking the lives of abusive parents.

Parricide⁴ accounts for several hundred deaths each year.⁵ It is estimated that ninety percent of all parricides involve children who are victims of constant and severe abuse.⁶ Studies indicate that abused children who kill their

1. DOUGLAS J. BESHAROV, RECOGNIZING CHILD ABUSE 2 (1990). See *infra* notes 33-35 and accompanying text. Throughout this Comment, the term "children" refers to infants, adolescents, and teenagers. See Frederick E. John, *Child Abuse—The Battered Child Syndrome*, in 2 AM. JUR. 2d *Proof of Facts* § 10 (1974).

2. See *infra* notes 36-58 and accompanying text; see also Mason P. Thomas, Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293, 329 n.127 (1972) (describing the unfortunate and disturbing death of an abused child, Roxanne Felumero, and a resulting judicial investigation of the case concluding that had the court and the public and private agencies involved functioned properly, Roxanne's death could have been avoided).

3. See *infra* notes 59-63 and accompanying text.

4. Throughout this Comment, the word "parricide" refers to "[t]he murder of one's parent." BALLENTINE'S LAW DICTIONARY 914 (3d ed. 1969).

5. In 1990, parricide accounted for an estimated 280 deaths in the United States; patriicide accounting for approximately 160 deaths, and matricide accounting for approximately 120 deaths. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTS 9, 13 (1990) [hereinafter UNIFORM CRIME REPORTS] (indicating that patriicide represented 0.8 percent and matricide represented 0.6 percent of the 20,045 homicides for which data was available in 1990); cf. PAUL A. MONES, WHEN A CHILD KILLS: ABUSED CHILDREN WHO KILL THEIR PARENTS 24-25 (1991) (noting that the annual figures, usually around three hundred, are thought to be underinclusive due to the large number of homicides that remain unsolved and unaccounted for each year). See generally *infra* note 69 (providing information regarding the identity of perpetrators and victims involved, and the frequency with which different forms of parricide occur).

6. See Nancy Blodgett, *Self-Defense: Parricide Defendants Cite Sexual Abuse as Justification*, A.B.A. J., June 1, 1987, at 36 (quoting Paul A. Mones, an attorney who specializes in

parents share many common traits and characteristics. Most of the children are compliant individuals of above-average intelligence, who have no prior criminal records and pose no threat to society at large.⁷ Yet the children usually suffer years of physical, emotional, or sexual abuse at the hands of parents, witness the abuse of other family members, know that others are aware of the abuse but cannot or will not help, and fear for their lives and safety.⁸ The circumstances under which the killings occur are often similar as well. Typically, parricide cases involve children who are denied or provided minimal assistance and, seeing no alternative, resort to self-help by killing the abusive parents using brutal methods in non-confrontational situations.⁹

When examining the immediate circumstances surrounding parricidal killings, the acts may appear to be first-degree murder.¹⁰ When the cases are examined in light of the underlying social, legal, and psychological causes, however, classifying the offenses and determining appropriate responses become debatable.¹¹ While the connection between child abuse and abused children who kill their parents is difficult to refute,¹² parricide cases continue to present society with a controversial moral and legal dilemma as, most

representing child abuse-parricide defendants); see also Shelley Post, *Adolescent Parricide in Abusive Families*, 61 CHILD WELFARE 445, 445 (1982) (revealing "that parricide is often the product of the perpetrator's chaotic emotions that result, in turn, from a pattern of child abuse in the family"). But see MONES, *supra* note 5, at 15 (stating that some may not agree with such a high estimate).

7. See, e.g., *People v. Cruickshank*, 484 N.Y.S.2d 328, 336-37 (App. Div. 1985), *aff'd*, *People v. Dawn Maria C.*, 490 N.E.2d 530 (N.Y. 1986); see also *infra* text accompanying notes 75-79.

8. See, e.g., *Jahnke v. State*, 682 P.2d 991, 1011 (Wyo. 1984) (Rose, J., dissenting); see also *infra* text accompanying notes 80-82, 88.

9. See, e.g., *Whipple v. State*, 523 N.E.2d 1363, 1365-66 (Ind. 1988), *habeas corpus denied*, *Whipple v. Duckworth*, 957 F.2d 418 (7th Cir.), *cert denied*, 113 S. Ct. 218 (1992); see also *infra* text accompanying notes 81, 89-90.

10. See *infra* text accompanying notes 89-92. Most American jurisdictions divide the crime of murder into degrees (usually two and sometimes three), providing the most severe penalties for first-degree murder, with less severe penalties for other forms of the offense. WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., *CRIMINAL LAW* § 7.7 (2d ed. 1986). In those jurisdictions dividing murder into degrees, one category of first-degree murder is usually defined as a premeditated, deliberate, and intentional killing. *Id.* § 7.7(a).

11. Compare *State v. Reid*, 747 P.2d 560, 564 (Ariz. 1987) (convicting defendant of first-degree murder after analyzing the immediate circumstances surrounding the death) with *State v. Stanberry*, No. 90-1022, slip op. at 6 (Md. Cir. Ct. Mar. 28, 1991) (finding the defendant guilty of manslaughter rather than murder due to the context in which the killing occurred) and case of Donna Marie Wisener, discussed *infra* text accompanying notes 188-93 (acquitting the defendant based on prior abuse).

12. See *infra* text accompanying notes 27-99.

often, both the crime of child abuse and the crime of homicide are involved.¹³

There is a debate in the legal community as to the appropriate legal response to abuse victims who take the lives of their abusers.¹⁴ Based on similarities in underlying causes, characteristics, and circumstances,¹⁵ many courts and scholars discussing the issue of parricide draw analogies to cases of battered women who kill.¹⁶ After taking the lives of their abusers, many women and children defendants now choose to claim self-defense and seek

13. See MONES, *supra* note 5, at 16 (contending that parricide presents society with a compelling dilemma "with guilt and innocence never clearly defined").

14. See *supra* text accompanying notes 10-13; see also Susannah M. Bennett, Comment, *Ending the Continuous Reign of Terror: Sleeping Husbands, Battered Wives, and the Right of Self-Defense*, 24 WAKE FOREST L. REV. 959, 960 (1989) (attributing much legal debate to cases in which battered women kill abusive spouses). See generally materials cited *infra* notes 15, 16.

15. For a variety of commentary on battered women, see Michael A. Buda & Teresa L. Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. FAM. L. 359 (1985); Steven D. Rittenmeyer, *Of Battered Wives, Self-Defense and Double Standards of Justice*, 9 J. CRIM. JUST. 389 (1981); Cathryn J. Rosen, *The Excuse of Self-Defense: Correcting a Historical Accident on Behalf of Battered Women Who Kill*, 36 AM. U. L. REV. 11 (1986); Elizabeth M. Schneider & Susan B. Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 WOMEN'S RTS. L. REP. 149 (1978); Jeanne-Marie Bates, Comment, *Expert Testimony on the Battered Woman Syndrome in Maryland*, 50 MD. L. REV. 920 (1991); Bennett, *supra* note 14; Rocco C. Cipparone, Jr., Comment, *The Defense of Battered Women Who Kill*, 135 U. PA. L. REV. 427 (1987); Donald L. Creach, Note, *Partially Determined Imperfect Self-Defense: The Battered Wife Kills and Tells Why*, 34 STAN. L. REV. 615 (1982); Loraine P. Eber, Note, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 HASTINGS L.J. 895 (1981); Sarah C. Madison, Comment, *A Critique and Proposed Solution to the Adverse Examination Problem Raised by Battered Woman Syndrome Testimony in State v. Hennum*, 74 MINN. L. REV. 1023 (1990); Mira Mihajlovich, Comment, *Does Plight Make Right: The Battered Woman Syndrome, Expert Testimony and the Law of Self-Defense*, 62 IND. L.J. 1253 (1987); Marilyn H. Mitchell, Note, *Does Wife Abuse Justify Homicide?*, 24 WAYNE L. REV. 1705 (1978); Kerry A. Shad, Note, *State v. Norman: Self-Defense Unavailable to Battered Women Who Kill Passive Abusers*, 68 N.C. L. REV. 1159 (1990); Laurie J. Taylor, Comment, *Provoked Reason in Men and Women: Heat-of-Passion Manslaughter and Imperfect Self-Defense*, 33 UCLA L. REV. 1679 (1986).

16. For examples of courts making such analogies, see *State v. Janes*, 822 P.2d 1238, 1242-43 (Wash. Ct. App.), *review granted*, 832 P.2d 488 (Wash. 1992); *Jahnke v. State*, 682 P.2d 991, 996 (Wyo. 1984). For materials written by commentators making such analogies, see Paul Mones, *The Relationship Between Child Abuse and Parricide: An Overview*, in UNHAPPY FAMILIES: CLINICAL AND RESEARCH PERSPECTIVE ON FAMILY VIOLENCE 37 (Eli H. Newberger & Richard Bourne eds., 1985) (urging that the legal strategy for child abuse-parricide defendants is similar to that used for battered women who kill); Joëlle A. Moreno, Comment, *Killing Daddy: Developing a Self-Defense Strategy for the Abused Child*, 137 U. PA. L. REV. 1281, 1285-90 (1989) (discussing the similarities between battered women and battered children who kill and claim self-defense); Mavis J. Van Sambeek, *Parricide as Self-Defense*, 7 LAW & INEQ. J. 87, 91-100 (1986) (exploring the foundation for self-defense claims in parricide cases based on theories used in cases of battered women who kill).

acquittal.¹⁷ These claims have become common in non-confrontational situations that do not fall within the traditional self-defense model, such as when the victim is sleeping or passive at the time of the killing.¹⁸ Because of the difficulties encountered in meeting the strict requirements of the self-defense doctrine, battered women and, more recently, battered children seek to introduce expert testimony to support their claims.¹⁹ While self-defense claims remain controversial, abused women and children assert that their

17. See *infra* text accompanying notes 112, 117-18; see also Cipparone, *supra* note 15, at 432 (asserting that an increasing number of battered women who kill their abusers claim self-defense); Moreno, *supra* note 16, at 1285 (observing that parricide defendants are now claiming self-defense as well).

18. See *infra* text accompanying notes 113-14. The focus of this Comment is on claims arising in non-confrontational situations, as most parricides fall within this category.

19. A full discussion of the intricacies in the debate regarding the use of expert testimony in cases in which an abuse victim has killed an abuser are beyond the scope of this Comment, although explanations, references, and generalizations about the use of such testimony are made throughout this Comment. See *infra* notes 115-16, 134.

Regarding battered women and expert testimony, the "battered woman syndrome" is a theory derived from the clinical studies of Dr. Lenore Walker, and describes behavioral patterns and characteristics common to women who suffer continuous physical and psychological abuse at the hands of a spouse. LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 95 (1984). Based on her studies, Dr. Walker explains the battering cycle to consist of three recurring phases of violence. The first phase is the "tension building" phase in which incidents of minor abuse occur, including both physical and verbal abuse. During this phase, the woman is complacent in order to prevent the escalation of violence. *Id.* The second phase is an "acute battering" phase wherein the spouse explosively and uncontrollably inflicts severe physical injury through outbursts or releases of tension built up during the first phase. *Id.* at 96. The harm, as in the first phase, usually results in severe psychological trauma where the woman feels less physical pain but a heightened sense of inability to leave the relationship. The acute battering phase is considered the most enduring and painful phase. *Id.* The final phase is a period of "loving contrition." *Id.* at 95. This period is usually marked by extreme kindness, pleas for forgiveness, and devotion: both individuals become hopeful or convinced that the cycle will not repeat itself. *Id.* at 96. After a period of no incidence, the cycle begins again and the woman falls into a state of "learned helplessness" where her motivation to leave is diminished. See LENORE E. WALKER, *THE BATTERED WOMAN* 43-54 (1979). Dr. Walker defines a battered woman as one who remains in a relationship after the cycle has occurred at least two times. *Id.* at xv.

The battered woman profile is used in conjunction with self-defense claims. In court, an expert may describe the syndrome, show that the defendant suffers from the syndrome, and then offer evidence on how the abuse affected the woman's perceptions and actions at the time of the killing. Van Sambeek, *supra* note 16, at 94-95. This profile and testimony is analogous to that of battered children. See *infra* notes 134-35 (discussing expert testimony as used in this context).

For cases in which battered women claim self-defense and offer evidence of the battered woman syndrome, see *Strong v. State*, 307 S.E.2d 912, 913 (Ga. 1983) (allowing expert testimony on the battered woman syndrome but affirming a verdict of felony murder); *Fultz v. State*, 439 N.E.2d 659 (Ind. Ct. App. 1982) (affirming the exclusion of battered woman syndrome testimony finding that the victim had not been shown to be sufficiently aggressive). For cases in which battered children claim self-defense and offer testimony on the effects of abuse, see *State v. Janes*, 822 P.2d 1238 (Wash. Ct. App.), *review granted*, 832 P.2d 488 (Wash. 1992) (reversing and remanding the lower court's exclusion of expert testimony); *Jahnke v. State*, 682

acts are justified as they have been failed by society and are faced with a decision to kill or be killed.²⁰

Opposing scholars argue that courts should not allow battered victims to claim self-defense or use expert testimony to prove its elements if a killing occurs in non-confrontational circumstances.²¹ Rather, they contend that the strict requirements of the self-defense doctrine are intended to bar such claims in order to protect the sanctity of human life and to limit the resort to self-help.²² Many such commentators alternatively suggest that the killings be categorized as voluntary manslaughter, casting the abuse as an extenuating factor by which to reduce a charge of murder.²³

Neither of these arguments has been universally accepted. As a result, courts vary in their approaches to cases involving battered women and children who kill their abusers, and widely disparate outcomes result. As the legal debate continues, the vast majority of child abuse-parricide defendants are found guilty of or plead guilty to some form of murder or manslaughter, while a minority are granted acquittal.²⁴ Based on the classification of the offense, courts must then determine what punishment to impose. The severity of sentences in child abuse-parricide cases typically ranges from life in prison to no punishment at all, with the average sentence being fifteen to twenty years incarceration.²⁵ The wide disparities in application of legal

P.2d 991 (Wyo. 1984) (excluding testimony); case of Donna Marie Wisener discussed *infra* notes 188-91 and accompanying text (allowing testimony).

20. See *infra* notes 115-18, 132-35 and accompanying text.

21. See *infra* notes 119, 121-22 and accompanying text.

22. See *infra* note 120 and accompanying text.

23. See *infra* notes 123-24, 130-31 and accompanying text.

24. See *infra* text accompanying notes 198-99. The precise statistics regarding parricide cases and resulting legal treatment are difficult to ascertain for a variety of reasons: cases exist where neither arrests are made nor charges brought; cases are not reported unless they rise to the appellate level; and a majority of the cases are resolved through the plea bargaining process. Because cases remain unknown or difficult to discover, it is often necessary to rely on book and newspaper accounts.

25. MONES, *supra* note 5, at 315. This Comment assumes the existence of a rational sentencing framework. However, due to existing guidelines and based on the charge for which the defendant pleads guilty or is convicted, courts may be constrained by indeterminate or determinate sentencing regimes. See generally ARTHUR W. CAMPBELL, LAW OF SENTENCING (2d ed. 1991) (providing a comprehensive guide to the law of sentencing). Indeterminate sentencing systems place wide discretion in the courts in determining prison terms within minimum and maximum sentence ranges based on the commission of particular offenses. See *id.* §§ 4:1-4:3 (discussing indeterminate sentencing). Comparatively, determinate sentencing systems limit judicial discretion in determining sentences by establishing sentences within a limited sentencing range. See *id.* §§ 4:4-4:9 (discussing determinate sentencing). Based on the constraints imposed by such sentencing regimes, several state sentencing guidelines and laws require revision in order for judges and juries to be able to fashion appropriate sentences for the unique individuals and circumstances involved in parricide cases. See generally *infra* note 26 (explaining that the roles played by prosecutors and defense counsel in parricide cases may

theory and imposition of sentences illustrate the flaws in current approaches, and underscore the need for a more appropriate legal response to abused children who kill abusive parents.²⁶

This Comment argues that analyses of parricide cases must encompass evaluations of the entire context in which the crimes occur, in conjunction with societal goals and criminal justice theories, in order to develop not only a valid, workable legal theory but also well-reasoned sentences. First, this Comment studies the connection between child abuse and parricide in a social, legal, and psychological context. It next surveys arguments of legal theory, as presented by advocates for battered women who kill and opposing scholars, and assesses these arguments based on several specific child abuse-parricide cases. This Comment then defines prominent societal and criminal justice considerations as they relate to abused children who kill, and examines cases that move toward a more appropriate legal response by remaining cognizant of these considerations in classifying offenses and imposing corresponding sentences. In conclusion, this Comment argues that classifying parricidal killings as voluntary manslaughter acknowledges the criminal nature of both child abuse and homicide, striking an appropriate balance among societal goals and theories of criminal justice. It then emphasizes that upon a finding of guilt, whether by trial or plea, courts must fashion appropriate sentences that adequately and effectively balance the competing interests of the child abuse-parricide defendant, society, and the criminal justice system.

also be determinative of the availability of an appropriate legal response to child abuse-parricide defendants).

26. This Comment focuses on an appropriate theoretical framework for determining the legal response to parricide cases. Other factors, not explicitly discussed in the text, are also crucial to the appropriate handling of parricide cases, yet are beyond the scope of this Comment. While this Comment outlines mitigating circumstances to be considered when classifying offenses and imposing sentences, it necessarily follows that the "framework approach" must be utilized not only by judges and juries, but also by defense counsel and prosecutors. See Mones, *supra* note 16, at 37 (suggesting that counsel develop "a defense strategy based upon the long-term affects of child abuse on the defendant's consciousness"); see also Carolyn Colwell, *Defending Kids Who Kill Their Parents*, N.Y. NEWSDAY, Sept. 26, 1991, at 103 (interviewing Paul A. Mones).

As soon as a person under [the] age of 18 is found to have killed his parent there should be a duty on the part of the district attorney's office to conduct a parallel child abuse investigation by the child abuse or sex crimes unit and not by the homicide unit. And the prosecutor, upon reviewing the investigations, should then put down in writing why he is making the decision to prosecute or why he is declining. We need a different standard for determining the prosecution of parricide cases.

Id. See generally CAMPBELL, *supra* note 25, §§ 14:1-15:23 (outlining the sentencing roles of defense counsel and prosecutors).

I. THE CONNECTION BETWEEN CHILD ABUSE AND PARRICIDE: SOCIAL, LEGAL, AND PSYCHOLOGICAL ELEMENTS

Child abuse²⁷ presents society with a difficult and perplexing challenge. In theory, society suggests that child abuse is unacceptable.²⁸ When confronted with abuse, however, society often responds with skepticism, disbelief, and inaction.²⁹ Subsequently, when children suffer a history of abuse at the hands of parents, fail to attract necessary care and assistance, and take the lives of abusive parents, society again reacts with shock and denial.³⁰ As evidence demonstrates that the devastating physical and psychological impact of child abuse may lead children to take the lives of abusive parents,³¹ it is essential to understand the dynamics of child abuse in order to deal effectively with the tragedy of parricide.³²

A. Child Abuse

Identifying a precise figure that depicts the actual incidence of child abuse is impracticable due to the substantial amount of underreporting and overreporting that occurs.³³ Despite a variance in statistics, research suggests that child abuse is a common phenomenon that is escalating to epidemic propor-

27. "Child abuse" has been defined as "physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby." RICHARD J. GELLES & CLAIRE P. CORNELL, *INTIMATE VIOLENCE IN FAMILIES* 20 (1985) (quoting the definition adopted by The National Center on Child Abuse and Neglect, an agency of the federal government); see also MURRAY A. STRAUS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* 7 (1980) (describing child abuse as "acts committed by parents on their children which other members of the society view as inappropriate and harmful").

The phrase "child abuse" describes a form of domestic violence. Other forms may include abuse of a spouse, parent, sibling, elder, or other family member. This Comment focuses only on child abuse. However, the conclusions of this Comment pertain, to some degree, to the plight of all victims of domestic violence, even though not specifically discussed.

28. See *infra* notes 42-46, 53-55 and accompanying text.

29. See VINCENT J. FONTANA, *SOMEWHERE A CHILD IS CRYING: MALTREATMENT—CAUSES AND PREVENTION* at xiii, 225 (3d ed. 1983) (noting society's "ignorance and indifference" to maltreated children, and how societal inaction will negatively affect the future of society).

30. See MONES, *supra* note 5, at 7 (explaining that shock and denial are the basis of these cases, not only within the family and society, but also in the courtroom).

31. See *id.* at 16; see also *id.* at 322 (recognizing that when a child kills an abusive parent there is "more than one finger on the trigger").

32. See *id.* at 311-22.

33. See Douglas J. Besharov, *Child Protection: Past Progress, Present Problems, and Future Directions*, 17 FAM. L.Q. 151, 161-63 (1983) (discussing underreporting and overreporting); see also John, *supra* note 1, § 2 (stating that to determine the actual incidence of abuse is "literally impossible").

tions.³⁴ Recent estimates reveal that over one million children are abused or neglected in the United States on an annual basis.³⁵

While these and other estimates vary, the deaths of over one thousand children each year are attributed to abuse and neglect.³⁶ Of those fatalities, thirty-five to fifty percent take place after the abuse or neglect has been made known to social service and criminal justice authorities.³⁷ To explain the occurrence of these deaths and the continued high incidence of child abuse, it is necessary to examine the historical development of attitudes and responses.

1. *Historical Overlay: Attitude and Response*

The historical reluctance to recognize problems of child abuse and infanticide has been traced to biblical times.³⁸ Physical abuse of children was justified not only by religion, but by notions of the best interest of the child.³⁹ Assuming that parents would love and protect their children and the best interests of the child would prevail, parents were granted the unfettered right to discipline their children.⁴⁰ Because traditional beliefs also held family

34. CHARLES P. EWING, *KIDS WHO KILL* 159-60 (1990) (revealing that many claim child abuse is reaching epidemic proportions and that data indicate an increase in both frequency and severity).

35. See *supra* text accompanying note 1. One popular survey, conducted for the federal government in 1986, suggests that approximately 358,500 children are physically abused, another 155,900 are sexually abused, and 211,100 are emotionally abused, while 794,700 are physically or emotionally neglected each year in the United States. NAT'L CTR. ON CHILD ABUSE AND NEGLECT, U.S. DEP'T OF HEALTH AND HUMAN SERVS., *STUDY OF NAT'L INCIDENCE AND PREVALENCE OF CHILD ABUSE AND NEGLECT: 1988*, at 6-7 (1988); cf. John, *supra* note 1, § 2 (citing estimates of incidents of child abuse and knowledge of such abuse that vary from ten thousand to four million per year).

36. DOUGLAS J. BESHAROV, *COMBATING CHILD ABUSE: GUIDELINES FOR COOPERATION BETWEEN LAW ENFORCEMENT AND CHILD PROTECTIVE AGENCIES* 2 (1990). Actual figures, however, are thought to be far higher due to the large number of deaths that are incorrectly reported or categorized as accidental. See Mones, *supra* note 16, at 32 (noting a source that estimates the number at two thousand); STRAUS ET AL., *supra* note 27, at 15 (relating that estimates of filicide vary from a child being killed each day to five thousand children being killed each year); cf. UNIFORM CRIME REPORTS, *supra* note 5, at 9, 13 (citing FBI statistics of 541 filicides in 1990).

37. BESHAROV, *supra* note 36, at 2; cf. STRAUS ET AL., *supra* note 27, at 229 (asserting that ninety percent of the cases in which a family member kills a child may first be reported to agencies).

38. STRAUS ET AL., *supra* note 27, at 7-8 (describing the traditional history, justification, and acceptance of violence toward children); see also FONTANA, *supra* note 29, at 4 (explaining biblical "theme[s] of child murder and abuse").

39. STRAUS ET AL., *supra* note 27, at 8.

40. See generally *id.* at 7-8, 51-52 (discussing the history of parental rights); Charlotte M. Cooksey, Comment, *The Battered Child—Louisiana's Response to the Cry*, 17 LOY. L. REV. 372, 381-82 (1971) (asserting that "reliance is placed on parental love as a guide in caring for and protecting" children).

relationships to be private matters, society had difficulty justifying interference with parental rights, and intervention into family life was virtually non-existent.⁴¹

During the 1960s,⁴² traditional beliefs about child-rearing were challenged and the existing problems of child abuse began to receive study and recognition.⁴³ In conjunction with the adoption of mandatory child abuse reporting laws,⁴⁴ states began to expand social service networks in order to aid parents in caring for their children.⁴⁵ While child abuse is presently a statutory offense for which criminal penalties are provided in each of the fifty states,⁴⁶ the trend has been to not impose sanctions unless severe or extenuating circumstances exist.⁴⁷

The approach used by social service agencies was and continues to be therapeutic and social-work oriented, encouraging parents to cooperate and

41. See GELLES & CORNELL, *supra* note 27, at 12 (discussing the idealization of family life); Thomas, *supra* note 2, at 338-39 (noting the historical reluctance to get involved in such matters).

42. In 1962, C. Henry Kempe and his colleagues published a seminal article entitled "The Battered-Child Syndrome." This effort, enabling physicians to better recognize child abuse, described the syndrome as "a clinical condition in young children who have received serious physical abuse," generally from a parent or foster parent. C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 JAMA 17, 17 (1962). This definition is presently narrow in that it restricts abuse to that which is physical. GELLES & CORNELL, *supra* note 27, at 20. For a current definition, see *supra* note 27. For information on the use of expert testimony on the effects of abuse in developing or supporting a defense in parricide cases, see *supra* note 19 and *infra* notes 134-35.

43. See STRAUS ET AL., *supra* note 27, at 9; see also MONES, *supra* note 5, at 29-31. For specific case studies, see Lester Adelson, *Slaughter of the Innocents: A Study of Forty-Six Homicides in Which the Victims Were Children*, 264 NEW ENG. J. MED. 1345, 1345-49 (1961). Various studies reveal such injuries as bruises, welts, black eyes, broken bones, split lips, lost teeth, head injuries, and ruptured organs. John, *supra* note 1, § 3, at 384 n.32. The methods used to inflict these injuries included: beating children with fists, cords, brushes, wooden spoons, ropes, sticks, baseball bats, shoes, pool cues, and broom handles; burning children with cigarettes, irons, pokers, and liquids; and suffocating, drowning, stabbing, and shooting children. *Id.* § 3, at 385 n.33. While research efforts initially concentrated on physical abuse, awareness and recognition soon extended to psychological and sexual abuse as well. See generally IRVING J. SLOAN, CHILD ABUSE: GOVERNING LAW & LEGISLATION 7-9 (1983) (discussing emotional maltreatment); ANN W. BURGESS ET AL., SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS 1-240 (1978) (providing an in-depth study of child sexual abuse).

44. See *infra* text accompanying notes 53-58.

45. BESHAROV, *supra* note 36, at 2-3.

46. Barbara Daly, *Willful Child Abuse and State Reporting Statutes*, 23 U. MIAMI L. REV. 283, 297 (1969); see also Barbara R. Grumet, *The Plaintive Plaintiffs: Victims of the Battered Child Syndrome*, 3 FAM. L.Q. 296, 307 (1970) (noting that all states have criminal statutes by which abusive parents may be prosecuted, including murder, aggravated assault, and cruelty to children laws).

47. Daly, *supra* note 46, at 297.

obtain treatment in order to preserve the integrity of the family unit.⁴⁸ Child protective agencies frequently respond to suspected abuse without involving or informing law enforcement officials.⁴⁹ Even when police are informed, they are often reluctant to intervene.⁵⁰ Prosecutors frequently hesitate to bring charges, and when charges are brought, convictions are difficult to obtain.⁵¹

The aforementioned circumstances have been recognized as deficiencies in society's response to child abuse. Aware of these shortcomings, the social service and criminal justice systems are developing more coordinated and effective approaches to protect children.⁵² In addition, legislative mechanisms have been implemented and amended in order to aid in combatting problems of child abuse.

2. Legislative Initiatives

By the mid-1960s, several different organizations had drafted child abuse reporting laws to serve as models for various states.⁵³ Following this lead, each state enacted legislation requiring designated professionals to report cases of suspected child abuse or neglect.⁵⁴ Since the enactment of these mandatory reporting laws, most states have amended their statutes to expand definitions of abuse, and to increase the number of persons who must report abuse and the kind of information that must be reported.⁵⁵

Mandatory reporting statutes were not envisioned as a complete solution. Rather, the laws represent an attempt "to bring child abuse out from behind closed doors."⁵⁶ The existing legislation has not been wholly effective and

48. See *id.*; see also DOUGLAS J. BESHAROV, *THE VULNERABLE SOCIAL WORKER: LIABILITY FOR SERVING CHILDREN AND FAMILIES* 76 (1985) (explaining society's reaction as a "social work" response).

49. See Daly, *supra* note 46, at 297.

50. STRAUS ET AL., *supra* note 27, at 232-33 (specifying reasons for lack of intervention, such as the danger involved, lack of cooperation, and absence of rewards).

51. *Id.* at 233-34. These complications demonstrate the beliefs that "the best interests of the child" are served by maintaining a non-interventionist attitude, ensuring that the child stays with the parents, or providing the parents with treatment are still widely held and followed. See Daly, *supra* note 46, at 297-98 (arguing that handling cases in this fashion provides a defense for abusive parents to continue to abuse the children and, hence, it becomes more difficult to deal with abusive parents in future cases).

52. See BESHAROV, *supra* note 36, at 1 (noting the development of coordinated efforts).

53. SLOAN, *supra* note 43, at 15.

54. See *id.*

55. See *id.* at 17-27. See generally John, *supra* note 1, §§ 14-26 (discussing common elements of reporting laws). For a recent listing and discussion of mandatory child abuse reporting laws, see Raymond C. O'Brien & Michael T. Flannery, *The Pending Gauntlet to Free Exercise: Mandating That Clergy Report Child Abuse*, 25 LOY. L.A. L. REV. 1, 18-20 n.106 (1991).

56. GELLES & CORNELL, *supra* note 27, at 129.

has been criticized for various reasons.⁵⁷ As changes to increase the effectiveness of these laws are implemented, the primary purpose of the legislation remains to protect children.⁵⁸ Nonetheless, due to the combined shortfalls in legislative, societal, social service, and criminal justice responses, successes have been diminished and inadequacies persist.

3. *Consequences of Abuse*

As a result of prevailing attitudes and inadequate responses, child abuse continues to play a role in the lives of millions of children. Most children subjected to abuse have not developed or matured to the point that they may fully appreciate the abusers' conduct or the implications of the abuse.⁵⁹ Many of the children are unclear as to whether the conduct is wrong, ambivalent about their feelings toward the abusers, and confused about their own guilt or innocence.⁶⁰

Regardless of how, when, why, or by whom children are abused, the abuse affects them in some fashion. If victims take no action, they may be killed,⁶¹ suffer physical injuries, emotional trauma,⁶² or become future victims of abuse or perpetrators of violence against others.⁶³ If victims desire and attempt to seek help, they may be unsuccessful.⁶⁴ Children unable to endure

57. One such criticism is that federal and state statutes remain broad and ambiguous, with no specific guidelines to assist potential reporters. See Daly, *supra* note 46, at 318-19. Another difficulty arises when cases are reported, but there is not sufficient evidence to justify intervention. See *id.* at 332. Even after cases are reported and investigated, follow-up procedures are often not specified or implemented. John, *supra* note 1, § 19. In addition, penalties for failing to report are not always imposed and, when imposed, are inconsistently enforced. See *id.* § 24; see also BESHAROV, *supra* note 36, at 3 (affirming that few cases result in civil or criminal action).

58. See SLOAN, *supra* note 43, at 16-17 (providing examples of statutory "purpose clauses"). Once a report has been investigated and substantiated, the social service and criminal justice systems may intervene by removing the abused child from the home, terminating parental rights, or enforcing some type of criminal sanction. See *id.* at 50-66, 75-88 (delineating the roles of the social service and criminal justice systems).

59. See John, *supra* note 1, §§ 11-12 (observing causes and effects of abuse).

60. See GELLES & CORNELL, *supra* note 27, at 19-20.

61. See *id.* at 51 (citing homicide as "one of the five leading causes of death for children between the ages of one and eighteen years of age").

62. See *id.* at 60; see, e.g., *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189 (1989) (recognizing that repeated failures of the social service agency to remove petitioner from his father's care resulted in severe beatings and permanent brain damage, rendering him profoundly retarded).

63. See John, *supra* note 1, §§ 9-12. Many researchers are of the opinion that, if untreated, abused children are more likely to become "delinquents, murderers, and batterers of the next generation of children." GELLES & CORNELL, *supra* note 27, at 59 (citation omitted). But see Mones, *supra* note 16, at 35 (asserting that a number of abused children do not grow up and use violence).

64. See *supra* text accompanying notes 46-51, 56-58. See generally Mones, *supra* note 16, at 36-37 (discussing the predicament of abused children).

the abuse, to escape, or to obtain assistance may take their own lives⁶⁵ or the lives of their abusers.⁶⁶

B. *Abused Children Who Kill*

When children take the lives of parents, their actions may be better understood if the entire context in which the killings occur is considered. The limited study of parricide links most of the killings to occurrences of domestic violence.⁶⁷ More specifically, studies of abused children who kill abusive parents identify several common characteristics, circumstances, and consequences.⁶⁸

1. *The Study of Parricide*

Each year, parricide accounts for an estimated three hundred deaths in the United States.⁶⁹ Because data indicate that approximately ninety percent of the children who commit parricide have suffered combined forms of

65. See *infra* note 87 and accompanying text.

66. One author notes that adolescence is a period in which a child is undergoing a sensitive developmental process, and "[w]hen abuse is added to this mix, it exacerbates an already confused, complicated period, thus making a violent reaction much more likely." MONES, *supra* note 5, at 15; see also EWING, *supra* note 34, at 157 (suggesting "[j]uvenile killers are not born but made").

67. See *supra* note 6 and accompanying text; see also *infra* notes 70, 80 and accompanying text. For a listing a various studies published on the subject of juveniles who kill, see EWING, *supra* note 34, at 172. Although quite lengthy, the listing includes few studies that focus on the issue of parricide. See *id.* There are generally thought to be three categories of motives for a child taking the life of a parent: mental illness, greed, and abuse (consisting of physical, sexual, or psychological abuse). See MONES, *supra* note 5, at 14-15. For the purposes of this research, the focus is on the latter class. For accounts of mentally ill persons who have killed parents, see GREGGORY W. MORRIS, *THE KIDS NEXT DOOR: SONS AND DAUGHTERS WHO KILL THEIR PARENTS* 187-226 (1985). For an account of a child killing a parent because of greed, see *id.* at 252-58.

68. See *infra* text accompanying notes 69-97.

69. See *supra* note 5; cf. Van Sambeek, *supra* note 16, at 89 (estimating the figure at four hundred deaths per year). Boys commit approximately ninety percent of all parricides. MONES, *supra* note 5, at 25. The most common form is sons killing fathers, accounting for roughly seventy percent of the homicides, with sons killing mothers comprising the next largest category. See *id.* at 25, 46, 177. This should not be too surprising as studies indicate boys are abused more often than are girls, and violence against boys is thought to be more acceptable as it "toughens them up" and is a "character builder." STRAUS ET AL., *supra* note 27, at 68-69. The parricide figures are consistent with overall United States homicide statistics, generally showing that men are perpetrators in almost ninety percent of all homicides, while women are responsible for the remaining percent. See UNIFORM CRIME REPORTS, *supra* note 5, at 11. Also consistent with these figures, girls are responsible for the other ten percent of parricide cases, with daughters killing fathers more often than mothers. See MONES, *supra* note 5, at 25, 211. In some instances, parricide cases involve other scenarios. *Id.* at 12 (noting that other scenarios may include sibling conspiracies, the killing of both parents or an entire family, or parricide for hire).

physical, psychological, and sexual abuse,⁷⁰ the study of domestic violence, child abuse, and incest has been instrumental in facilitating research on abused children who take the lives of abusive parents. Within the last two decades, a limited number of psychiatrists and psychologists began to focus on parricide and, more recently, attention has come from the legal community.⁷¹ Based on these efforts, it is possible to provide a profile on abused children who kill abusive parents.

2. *Characteristics, Circumstances, and Consequences*

Abused children who kill their parents share many similar characteristics.⁷² Child abuse-parricide defendants are usually from white, middle or upper-middle class backgrounds,⁷³ ranging in age from sixteen to eighteen years old.⁷⁴ Typically, the children have no history of delinquency or violent behavior.⁷⁵ On the contrary, many are described as exemplary children,⁷⁶ submissive and peaceful,⁷⁷ posing no threat to other members of society at large.⁷⁸ Most of the children function normally in school and are average or above-average students.⁷⁹ The children are generally subject to unstable family relations and patterns of severe victimization by a parent, suffering combined forms of abuse and witnessing the abuse of other family

70. See *supra* note 6 and accompanying text; see also EWING, *supra* note 34, at 8-9 (observing that witnessing spouse abuse and being personally abused are both extremely common, and being a victim of domestic violence is "the single most consistent finding" in juvenile killings).

71. For examples of psychiatrists and psychologists involved in the study of parricide, see *infra* notes 80, 95. Regarding legal attention, see Moreno, *supra* note 16, at 1306-07 (advocating a legal defense for parricide defendants); Van Sambeek, *supra* note 16, at 96-100 (same). See generally Mones, *supra* note 16, at 31-38 (reviewing the legal response to child abuse-parricide defendants); MONES, *supra* note 5, at 45-322 (providing dialogue and case-by-case reviews of parricide cases and legal responses); EWING, *supra* note 34, at 15-30 (discussing cases of youths who committed parricide).

72. MONES, *supra* note 5, at 12 (asserting that "the psychological and behavioral profile of the child and the pattern of abuse are fairly predictable, as are the actual events which triggered the killing").

73. *Id.* Children from poorer backgrounds are more apt to have public agencies involved in their lives and are also more likely to know how to obtain help. In middle-to-upper middle class families, abuse is more difficult to detect because the families "live in more isolated surroundings" and are able to better protect themselves from public scrutiny. *Id.* at 163.

74. *Id.* at 12. Cases have been recorded where children as young as three and "children" over the age twenty-one have committed parricides. In the latter class, mental illness or greed are more likely to have been a factor. *Id.* at 14.

75. Mones, *supra* note 16, at 36.

76. EWING, *supra* note 34, at 19.

77. MONES, *supra* note 5, at 12.

78. See Mones, *supra* note 16, at 37; Van Sambeek, *supra* note 16, at 93.

79. See MONES, *supra* note 5, at 12; Van Sambeek, *supra* note 16, at 104.

members.⁸⁰ It is common to find that these children are denied or receive little assistance, and that few options to end the abuse exist.⁸¹ The children often know that others are fully aware of the abuse but are unable or unwilling to help.⁸²

Most of the children seem to have very close relationships with their parents and are frequently described as very compliant adolescents.⁸³ Psychologists note that the parents view the children as objects or pieces of property; the children exist in order to satisfy the needs of the parents, having no independent identity.⁸⁴ Running away from home is not an option for many of these children because of the existing emotional and social bonds with the parents, or because of fear that other family members will be abused in their absence.⁸⁵ Even when the children do run away, they are often returned home to their parents.⁸⁶

Having endured the abuse, many of the children blame themselves for their situations and are potentially suicidal.⁸⁷ After repeated beatings and threats, the children believe their lives to be in "mortal danger."⁸⁸ As a result of these characteristics and circumstances, the children usually kill in some combination of fear, revenge, or self-defense.⁸⁹ The killings are commonly premeditated, brutal, and take place when the parent is in a non-threatening position.⁹⁰ Many children deny the killings and try to cover

80. MONES, *supra* note 5, at 12; see also Billie F. Corder et al., *Adolescent Parricide: A Comparison with Other Adolescent Murder*, 133 AM. J. PSYCHIATRY 957, 959 (1976).

81. Mones, *supra* note 16, at 36-37 (recognizing difficulties that confront the youths); Van Sambeek, *supra* note 16, at 93, 99-100 (stating assistance and response is usually ineffective, and that there are a lack of alternatives, such as shelters for abused children).

82. An example may be when a mother is also a victim of abuse and is unable to help or protect the child. See Van Sambeek, *supra* note 16, at 100. In addition, others are often ignorant of signs of abuse or reluctant to intervene. See *id.*; MONES, *supra* note 5, at 16, 95, 319.

83. See Lawrence Meyer, *Kids Who Kill Parents*, WASH. POST, May 13, 1984 (Magazine), at 15-16 (describing how "[a] tight bond, like that between master and slave, develops").

84. See *id.* at 15; MONES, *supra* note 5, at 13.

85. MONES, *supra* note 5, at 36-37, 41-42; see also MORRIS, *supra* note 67, at 154 (explaining the dilemma faced by children who contemplate running away). But see EWING, *supra* note 34, at 9 (revealing that "running away from home has been reported almost exclusively in juveniles who eventually killed one of their parents").

86. See, e.g., *State v. Stanberry*, No. 90-1022, slip op. at 5 (Md. Cir. Ct. Mar. 28, 1991).

87. Mones, *supra* note 16, at 36 (referring to the children as "potentially suicidal"); Van Sambeek, *supra* note 16, at 93 (describing children who commit parricide as often "more suicidal than homicidal").

88. MORRIS, *supra* note 67, at 293.

89. See, e.g., *Jahnke v. State*, 682 P.2d 991, 1010 (Wyo. 1984) (Brown, J., concurring) (noting that Jahnke claimed, at different times, that he was motivated by revenge, self-defense, and fear).

90. See MONES, *supra* note 5, at 14, 106 (describing circumstances under which these children kill). It is typical for a child to "shoot, club, or stab the parent numerous times," especially while the parent is in a non-threatening position. *Id.* at 14. In many parricide cases,

them up, but eventually confess to the acts.⁹¹ Based on such factors, parricidal killings typically appear to be first-degree murder.⁹²

After taking the life of an abusive parent, the children usually experience a sense of freedom and safety because the parent and the heightened sense of fear are gone.⁹³ Yet, many of the children remain confused and tend to deny the extent of the abuse they endured and, again, become suicidal.⁹⁴ Most of these children are amenable to treatment and, thereafter, are able to adjust relatively well.⁹⁵ With treatment, the children may confront their situations, learn that they were not responsible for the abuse, and that violence is not the answer to dealing with problems.⁹⁶ The children, however, must also accept their share of responsibility for the parricide.⁹⁷

When examining the social, legal, and psychological dynamics of abuse and the profile of abused children who kill abusive parents, the connection between child abuse and parricide becomes evident.⁹⁸ Developing a program to effectively prevent, intervene, and correct existing problems requires attention to the underlying causes, characteristics, circumstances, and consequences outlined above.⁹⁹ In the interim, analyses of parricide cases must encompass evaluations of the entire context in which the crimes occur in order to determine how best to deal with abused children who take the lives of abusive parents.

overkill is common because of the child's fear that the parent will retaliate, not because of the child's desire to injure the parent. *Id.* at 106.

91. See Jonathan Groner, *Why Do Kids Become Killers?*, LEGAL TIMES, Nov. 4, 1991, at 46 (reviewing MONES, *supra* note 5).

92. MONES, *supra* note 5, at 61; see also *supra* note 10 (discussing the offense of first-degree murder).

93. MONES, *supra* note 5, at 321.

94. *Id.* at 312. For example, many parricide youths spoke of suicide or tried to kill themselves within six months of the murder. *Id.* at 326.

95. See *id.* at 320; see also Corder et al., *supra* note 80, at 959 (positing that data from a study of ten parricidal adolescents showed that the "group had adjusted well outside prison with minimum psychiatric treatment and intervention"); Jane W. Duncan & Glen M. Duncan, *Murder in the Family: A Study of Some Homicidal Adolescents*, 127 AM. J. PSYCHIATRY 1498, 1501-02 (1971) (indicating that after the child has killed the family member, the source of the problem no longer exists and the child may no longer be a threat).

96. MONES, *supra* note 5, at 320; Post, *supra* note 6, at 452.

97. MONES, *supra* note 5, at 320.

98. See *supra* text accompanying notes 27-89; see also Moreno, *supra* note 16, at 1299-1306 (examining the link between child abuse and parricide); Van Sambeek, *supra* note 16, at 91 (noting "that there is an amazingly high correlation between [child abuse and parricide]").

99. See Post, *supra* note 6, at 454 (discussing how parricide cases raise the issues of child abuse detection and prevention).

II. ASSESSING THE LEGAL RESPONSE TO CHILD ABUSE-PARRICIDE DEFENDANTS: BATTERED WOMEN WHO KILL, A FOUNDATION FOR ANALYSIS

Battered women and children face similar difficulties as the responses of societal, social service, and criminal justice systems have inadequately addressed the problems faced by both groups.¹⁰⁰ After suffering continued abuse and confronting the prevailing societal attitudes and inadequate responses, abused women and children show characteristics and behavioral patterns that resemble one another.¹⁰¹ When abused women and children resort to self-help and take the lives of their abusers, the circumstances surrounding the killings are similar as well.¹⁰² Based on the likenesses in underlying causes, characteristics, and circumstances, it is possible to draw compelling analogies between battered women and battered children. Because of these analogies, and because the degree of recognition and awareness extended to battered women has not been paralleled for children, courts and commentators often use battered women cases as a foundation for examining cases of parricide.¹⁰³

A. *Defending Battered Women Who Kill*

Skilled advocacy on behalf of battered women has resulted in a better understanding of battering relationships, and continuous efforts have improved the ability of the current system to respond to the problems of abuse.¹⁰⁴ However, when prevention and intervention are unsuccessful, some women resort to self-help and take the lives of their abusers.¹⁰⁵ Prior to the 1970s, these defendants tended to rely on the complete defense of insanity, or one of

100. For responses to problems of child abuse, see *supra* text accompanying notes 27-58. For materials specifically relating to responses to battered women, see Lisa G. Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 HARV. WOMEN'S L.J. 57 (1984) (reviewing the nature of wife abuse together with traditional and contemporary responses to the abuse); Lynn A. Sacco, *Wife Abuse: The Failure of Legal Remedies*, 11 J. MARSHALL J. OF PRAC. & PROC. 549 (1978); Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 624-30 (1980) (discussing societal attitudes and legal origins of woman abuse).

101. Mones, *supra* note 16, at 37; Van Sambeek, *supra* note 16, at 97 n.88. For a profile on abused children who kill abusive parents, see *supra* text accompanying notes 72-97. For a profile on battered women who kill, see *supra* note 19; Cipparone, *supra* note 15, at 431-32 (noting characteristics of battered women who kill).

102. Van Sambeek, *supra* note 16, at 93 (describing similarities between battered women and children who kill).

103. See materials cited *supra* note 16.

104. See generally Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267, 267-69 & nn.2 & 7 (1985) (contending that efforts on behalf of battered women have led to improvements in societal, social service, and criminal justice responses).

105. See generally materials cited *supra* note 15.

several mitigating defenses.¹⁰⁶ When traditional legal doctrine was strictly applied, battered women who killed were customarily prosecuted for murder or manslaughter.¹⁰⁷ During the late 1970s, defense attorneys began to challenge traditional legal doctrine and explore other alternatives for defending battered women charged with killing their abusers.¹⁰⁸ Today, battered women typically claim self-defense and seek acquittal.

1. *The Doctrine of Self-Defense*

Professors LaFave and Scott, leading authorities on the subject of criminal law, explain that the law recognizes the right to use deadly force against an unlawful aggressor in self-defense when there is no opportunity to resort to the criminal justice system.¹⁰⁹ Self-defense is a complete defense to homicide and, if proven, the defendant is not guilty of any crime.¹¹⁰ Under the traditional model, similarly defined in most jurisdictions, a killing is justified: (1) if the killer had a *reasonable belief* of an *imminent* threat of death or serious bodily injury; and (2) if *reasonable force* was necessary to prevent such harm.¹¹¹ The modern trend is for abused women charged with killing their abusers to seek to justify the acts as self-defense.¹¹² The circumstances surrounding the death of an abusive spouse may, in some cases, provide sufficient evidence to satisfy the requirements of the traditional self-defense

106. Battered women historically relied on impaired mental state defenses such as insanity or diminished capacity. See Schneider & Jordan, *supra* note 15, at 159. Insanity is a complete defense to homicide that results in conviction or acquittal, while diminished capacity is usually only a mitigating defense. See *id.* at 159 & n.85. However, battered women who kill became frustrated with both defenses as the defendants could be committed to mental institutions for indefinite periods of time. See *id.* at 159-60. Battered women defendants have also argued the killings occurred in a heat of passion. This defense was used most often to reduce a charge of first-degree murder to voluntary manslaughter. See *id.* at 153, 159; see also *infra* notes 123-29 and accompanying text (discussing heat of passion manslaughter). See generally Mitchell, *supra* note 15, at 1722-25 (analyzing defenses of insanity, diminished capacity, and provocation/heat of passion).

107. See Rosen, *supra* note 15, at 13.

108. *Id.* at 14, 36. The resulting theory is referred to as the "battered woman's defense." *Id.* at 14; see also *supra* note 19.

109. LAFAVE & SCOTT, *supra* note 10, § 5.7(a).

110. *Id.* In order to evaluate a claim of self-defense, a judge or jury will determine if the elements of reasonableness are satisfied based on either an objective or subjective standard. Rosen, *supra* note 15, at 31. In theory, a majority of jurisdictions apply an objective standard. See LAFAVE & SCOTT, *supra* note 10, § 5.7(c)-(d).

111. LAFAVE & SCOTT, *supra* note 10, § 5.7, at 454 (emphasis added). Furthermore, the person claiming self-defense generally must not have been the aggressor. *Id.* § 5.7(e). A few jurisdictions require that the person must have had no opportunity to safely retreat. *Id.* § 5.7(f).

112. See Bennett, *supra* note 14, at 960; Mihajlovich, *supra* note 15, at 1253.

model, as when the killing occurs during an abusive attack.¹¹³ Often, however, the killings occur in situations in which the evidence does not conform with this model; for example, when the killing occurs between attacks and the abuser is passive or asleep.¹¹⁴

The difficulties encountered in meeting strict self-defense standards led many battered women to offer lay and expert testimony to aid the trier of fact in comprehending the entire context of the crime.¹¹⁵ Claims of self-defense in non-confrontational situations, with expert testimony to support such claims, remain debatable and create controversy as to whether self-defense is a viable option.¹¹⁶ Nonetheless, battered women who kill prefer to claim self-defense because it is a complete defense that results in acquittal when all elements of the doctrine are satisfied.¹¹⁷ Battered women continue to argue that the resort to self-help was reasonable and necessary, suggesting that they have been failed by society and left with a decision to kill or be killed.¹¹⁸

While most battered women prefer to argue self-defense to gain acquittal, several scholars contend that battered women are stretching self-defense be-

113. See Bates, *supra* note 15, at 927; Cipparone, *supra* note 15, at 434-36; see, e.g., State v. Lynch, 436 So. 2d 567 (La. 1983) (defendant killed husband while trying to retreat from a physical attack).

114. See Bates, *supra* note 15, at 927; Cipparone, *supra* note 15, at 436-39; see, e.g., State v. Gallegos, 719 P.2d 1268 (N.M. 1986) (defendant killed husband as he lay on the bed following a day of sexual abuse); State v. Leidholm, 334 N.W.2d 811, 814 (N.D. 1983) (defendant killed husband as he slept).

115. See Rosen, *supra* note 15, at 36-41. In many cases, lay testimony may be introduced to establish the existence of a specific pattern of violence in the individual case. See Schneider, *supra* note 100, at 644-45 (arguing that such testimony is crucial in order to understand the circumstances surrounding the act and the defendant's own perceptions). Expert testimony on the battered woman syndrome may be introduced as well in order to assist the judge or jury in understanding common experiences, characteristics, and perceptions of battered women. See *supra* note 19. This testimony, in effect, is meant to demonstrate the reasonableness of force used, or the reasonableness of a perception of "imminent" danger. See Rosen, *supra* note 15, at 41; Bates, *supra* note 15, at 929-32. For example, in non-confrontational situations, the testimony may support an instruction and claim of self-defense by proving that the history of abuse may heighten a victim's fear and knowledge of impending danger such that the abuser is as threatening in a non-confrontational situation as during an attack. See Bates, *supra* note 15, at 930-31; Madison, *supra* note 15, at 1031-32.

116. Serious debate remains as to the extent and circumstances under which battered woman syndrome testimony may be admissible, especially in reference to non-confrontational situations. Most courts allow testimony in traditional cases but exclude the testimony in non-confrontational situations. See Bates, *supra* note 15, at 927. For a listing of courts which have addressed and ruled on admissibility, see Madison, *supra* note 15, at 1032-36 & nn.48-51.

117. See LAFAYE & SCOTT, *supra* note 10, § 5.7(a).

118. Rosen, *supra* note 15, at 38. See generally Buda & Butler, *supra* note 15, at 360 (stating that the "decision" is really no decision at all as they are often left with no other choice); Eber, *supra* note 15, at 930 (arguing that battered women kill their abusers as a last resort in order to end abuse and avoid death from further abuse).

yond its acceptable limits.¹¹⁹ They argue that the self-defense doctrine is designed to protect the sanctity of human life and to limit self-help, which is accomplished by the doctrine's strict requirements of necessity, proportion, and imminence.¹²⁰ These same scholars assert that allowing claims of self-defense in non-confrontational circumstances, with expert testimony to support such claims, and granting acquittal is likely to create "an open season on men"¹²¹ and sanction vigilantism.¹²² Contrary to the arguments of battered women, such scholars suggest a balanced approach in which the underlying causes, characteristics, and circumstances become mitigating factors to reduce a homicide charge from first-degree murder to voluntary manslaughter.

2. *Reducing the Charge: Murder to Manslaughter*

Instead of claiming self-defense, a battered woman may seek the reduction of a first-degree murder charge to one of voluntary manslaughter when extenuating circumstances exist.¹²³ According to LaFave and Scott, manslaughter is a separate and distinct crime and has been described as those "homicides which are not bad enough to be murder but which are too bad to be no crime whatever."¹²⁴

The most common form of voluntary manslaughter is a killing that occurs in a "heat of passion."¹²⁵ Most jurisdictions classify the killing as an inten-

119. See generally Creach, *supra* note 15, at 627-30 (arguing that acquittal, despite a lack of sufficient evidence to support self-defense, is contrary to the rule of law); Mitchell, *supra* note 15, at 1725, 1731 (contending that allowing self-defense in battered women cases when the requirements are not met justifies homicide when the acts "cannot be distinguished from revenge"); Rittenmeyer, *supra* note 15, at 390 (asserting that battered women are attempting to replace imminence requirements with rationales of future harm and inadequate responses).

120. See Creach, *supra* note 15, at 628 (noting that the restrictions of the self-defense doctrine are meant to deter self-help and require a genuine fear of imminence); Mihajlovich, *supra* note 15, at 1269 n.98 (asserting that the social goal of the self-defense doctrine is to preserve human life, and "[t]o erode the proportionality and necessity components . . . is to broaden the range of circumstances under which a life can legally be taken without criminal sanctions").

121. Schneider & Jordan, *supra* note 15, at 150 n.4 (quoting Peter S. Greenberg, *Thirteen Ways to Leave Your Lover*, NEW TIMES, Feb. 6, 1978, at 6). See generally Rittenmeyer, *supra* note 15, at 390 (claiming that allowing self-defense gives battered women the right to murder at will); see also Rosen, *supra* note 15, at 52 (discussing the resort to self-help, if justified, is against societal interests as it encourages similar conduct from others).

122. See generally Creach, *supra* note 15, at 627 n.55 (asserting that "[t]here have been disquieting indications of vigilantism in the battered wife setting"); Mihajlovich, *supra* note 15, at 1269 n.98 (stating that "[t]o acquiesce to battered women, and allow them to kill their abusers to end the abuse, is to encourage similar action by others"); Taylor, *supra* note 15, at 1705 (setting forth the opposition to claims of self-defense for battered women who kill).

123. See LAFAVE & SCOTT, *supra* note 10, § 7.10.

124. *Id.* § 7.9.

125. See *id.* § 7.10; see also *supra* note 106 (mentioning another method by which to mitigate the killing to manslaughter, referred to as diminished capacity). Another common form

tional homicide, taking place under extenuating circumstances which mitigate, but do not excuse or justify, the act.¹²⁶ The extenuating circumstance is usually created by a provocation of another which would have caused a reasonable person to lose control.¹²⁷ To prevail, the defendant must prove: (1) that there was *reasonable provocation*, (2) that it did in fact provoke the defendant, (3) that a *reasonable person would not have cooled off* in the interval between the provocation and the fatal attack, and (4) that the defendant had not in fact cooled off.¹²⁸ To prove these elements, battered women may attempt to introduce lay and expert testimony to support their claims.¹²⁹

Although battered women who kill their abusers prefer a complete defense, several scholars maintain that some form of voluntary manslaughter, rather than self-defense, is the appropriate legal response to the killings. These scholars argue that extenuating circumstances, such as a history of abuse and societal failures, may be recognized in order to reduce a charge from murder to manslaughter.¹³⁰ As a balanced approach, classifying the offense as voluntary manslaughter recognizes both crimes in the context in

of mitigation from first-degree murder to voluntary manslaughter is an imperfect self-defense claim. See, e.g., *State v. Norris*, 279 S.E.2d 570 (N.C. 1981) (battered woman case); *State v. Stanberry*, No. 90-1022 (Md. Cir. Ct. Mar. 28, 1991) (battered child case). Some jurisdictions recognize this doctrine and mitigate the charge when the defendant used reasonable force and had an honest, but unreasonable, belief of imminent danger. See LAFAVE & SCOTT, *supra* note 10, § 7.11(a); Taylor, *supra* note 15, at 1707-11. Other jurisdictions may allow this defense when the imperfection is the defendant's failure to meet the reasonable force requirement. See LAFAVE & SCOTT, *supra* note 10, § 7.11(a); Taylor, *supra* note 15, at 1707-11. Here, too, lay and expert testimony may be introduced with such claims. For example, the testimony may be offered to prove that the battered woman used reasonable force or held an honest belief of imminent danger. See Mihajlovich, *supra* note 15, at 1280.

126. LAFAVE & SCOTT, *supra* note 10, § 7.10.

127. *Id.*

128. *Id.* § 7.10(a) (emphasis added). In determining whether manslaughter has occurred, American jurisdictions differ in evaluating the reasonableness of the defendant's conduct: most apply an objective standard, while others apply a more subjective standard. See *id.* § 7.10(b), at 654 & n.13.

129. For example, in order to show that a history of abuse culminating with the most recent attack constituted reasonable provocation, the testimony may be offered to prove that the woman acted reasonably and within the cooling off period. Mihajlovich, *supra* note 15, at 1279 (asserting a battered woman may likely have an extended cooling off period).

130. See generally Creach, *supra* note 15, at 635-38 (arguing for expansion of the doctrine of imperfect self-defense to include killings in response to external forces sufficient to put the defendant in genuine fear); Mihajlovich, *supra* note 15, at 1278-81 (explaining various strategies for categorizing murders by battered women of their attackers in non-confrontational situations as manslaughter where a defendant's status as a battered woman would be recognized as an extenuating circumstance, and arguing that such classification will allow battered women defendants to include their true emotions, such as anger and fear, in their defenses to establish the reasonableness of their feelings of helplessness); Shad, *supra* note 15, at 1176 (contending that the legislature should broaden its voluntary manslaughter offense to include a new ground where the battered woman syndrome has been established); Taylor, *supra* note 15, at 1726-34 (advocating that the definition of heat of passion manslaughter be broadened to include such

which they occur: categorizing the abuse as a mitigating circumstance, while at the same time preserving the intent of the self-defense doctrine by stressing the sanctity of human life and discouraging self-help.¹³¹

B. Responding to Child Abuse-Parricide Defendants

Claims in parricide cases have been slower to develop, yet have followed a similar pattern to those in cases of battered women who kill.¹³² As with battered women, abused children who kill their abusers prefer to seek acquittal by arguing that the killings are justified as self-defense,¹³³ while offering lay and expert testimony to support their claims.¹³⁴ Thus, the same controversial issues presented in cases of battered women who kill exist in child abuse-parricide cases,¹³⁵ and similarly disparate outcomes result.

external influences as the battered woman's syndrome, and the entire context in which the crimes occur).

131. This balanced approach avoids the extreme outcomes of the self-defense doctrine—conviction of first-degree murder or acquittal. See Creach, *supra* note 15, at 634 (noting that the self-defense “polar model is inadequate,” while manslaughter provides a “middle ground”); Mihajlovich, *supra* note 15, at 1278 (claiming that manslaughter is a compromise between opposing interests); Shad, *supra* note 15, at 1177 (contending manslaughter balances “individualized justice for the battered woman and general deterrence of uncontrolled self-help”).

132. See *supra* text accompanying notes 104-08. Determining how to deal with a child who has committed parricide will depend on many factors. These factors may include, but are not limited to: the unique circumstances surrounding the death; the state in which the homicide occurs; the judge before whom the case is heard; the quality of representation; the defense used; the makeup of the jury; and the evidence of the severity and history of abuse. See Lois Timnick, *Fatal Means for Children to End Abuse: Parricide Cases Evoke Conflict in Sympathy, Need for Punishment*, L.A. TIMES, Aug. 31, 1986, at B2. Other factors may include whether the child is tried as a juvenile or an adult, the offense charged, the motions entertained by the court, the plea bargaining process, and the admissibility of lay and expert testimony.

133. See Moreno, *supra* note 16, at 1285; Van Sambeek, *supra* note 16, at 91.

134. The testimony is offered to explain how the children's perceptions of and responses to imminent danger differ from persons who have not suffered abuse. See, e.g., *Jahnke v. State*, 682 P.2d 991, 1043 (Wyo. 1984) (Rose, J., dissenting); see also Van Sambeek, *supra* note 16, at 97. Recently, some courts have begun to recognize this expert testimony as admissible evidence to aid the trier of fact in evaluating the defendant's perception of being in imminent danger (as advocated by battered children who kill and claim self-defense). See, e.g., *State v. Janes*, 822 P.2d 1238, 1243 (Wash. Ct. App.), review granted, 832 P.2d 488 (Wash. 1992) (recognizing expert testimony on the effects of child abuse as admissible in “appropriate cases”). However, most courts do not allow the testimony under non-confrontational circumstances. See, e.g., *Jahnke*, 682 P.2d at 1007 (explaining that in the absence of imminent danger such evidence is properly excluded). See generally *supra* note 19 (providing information on the use of expert testimony by battered defendants).

135. See Moreno, *supra* note 16, at 1285-90 (discussing the use of self-defense and expert testimony in cases in which battered children have killed abusive parents); Van Sambeek, *supra* note 16, at 91-100 (equating use of self-defense and expert testimony in parricide cases with cases of battered women who kill).

1. *The Historical Approach*

An example of the historical analysis used in a parricide case is illustrated by the 1954 case of *State v. Beard*.¹³⁶ In *Beard*, the New Jersey Superior Court convicted the defendant of first-degree murder for the death of his mother and imposed the death sentence.¹³⁷ On appeal, the Supreme Court of New Jersey sustained the lower court.¹³⁸ According to the supreme court, there was no need to determine why the crime had been committed because the nature of the crime, coupled with the manner in which it was executed and the defendant's confession, provided ample proof that the murder was willful, premeditated, and deliberate.¹³⁹ In its opinion, the court stated that "[t]he killing of one's own mother has horror written in its very thought and the circumstances involved, to say the least, are exceptional and lastingly impressive."¹⁴⁰

The *Beard* decision is indicative of the shock and denial that have traditionally accompanied parricide cases.¹⁴¹ Not all of the specific facts and circumstances surrounding the crime are documented because the court was not concerned with analyzing the context in which the crime occurred. The evidence was sufficient to support a conviction for first-degree murder and the imposition of the death penalty, and therefore no other considerations were addressed. This case is unquestionably harsh and extreme in outcome, yet it reinforces the historical attitudes regarding family matters.¹⁴² As reflected in *Beard*, this historical approach fails to deal with the defendant's behavior in the entire context in which the crime occurred.¹⁴³

2. *Application of Traditional Legal Doctrine*

Since the *Beard* decision, some courts considering parricide cases have been willing to recognize the context in which the crime occurred, but refuse to recognize claims of self-defense or allow mitigating circumstances to reduce a charge of first-degree murder. *Whipple v. State*¹⁴⁴ is a fairly recent example of the strict application of the traditional self-defense doctrine. In

136. 106 A.2d 265 (N.J. 1954).

137. *Id.* at 267.

138. *Id.* at 270.

139. *See id.*; *see also supra* note 10 (defining first-degree murder).

140. *Id.*

141. *See supra* text accompanying notes 27-30.

142. *See supra* text accompanying notes 38-41.

143. *See* MONES, *supra* note 5, at 5 (recognizing the *Beard* case as "typical" of the historical treatment of parricide cases); *see also* Groner, *supra* note 91, at 46 (suggesting that it is "hard to conceive of any societal goal, except for sheer retribution, that is aided by such draconian results").

144. 523 N.E.2d 1363 (Ind. 1988), *habeas corpus denied*, *Whipple v. Duckworth*, 957 F.2d 418 (7th Cir.), *cert. denied*, 113 S. Ct. 218 (1992).

Whipple, the defendant, seventeen year old Dale Whipple, killed his mother and father with an axe, and was subsequently charged with two counts of murder.¹⁴⁵

Although the trial court was presented with evidence of seventeen years of physical and emotional abuse inflicted by Dale's parents¹⁴⁶ as well as several failed attempts by Dale to seek assistance to end the abuse,¹⁴⁷ the trial judge rejected a claim of self-defense on the basis that there was no evidence of an imminent danger at the time of the killings.¹⁴⁸ Dale was found guilty but mentally ill on both counts of murder¹⁴⁹ and sentenced to concurrent terms of imprisonment: forty years for the death of his mother and thirty years for the death of his father.¹⁵⁰ On appeal, Dale argued that the trial court erred in refusing an instruction on self-defense.¹⁵¹ The Indiana Supreme Court rejected the claim and affirmed the lower court,¹⁵² concluding that although Dale may have been a victim of abuse and believed it necessary to use deadly force to prevent further abuse, there was no proof of imminent danger at the time of the killing upon which an instruction on self-defense could be based.¹⁵³

In a similar case, *State v. Reid*,¹⁵⁴ defendant Sandra Reid took the life of her physically, emotionally, and sexually abusive father, killing him as he slept.¹⁵⁵ At trial, Sandra's claim of self-defense centered around her fear of her father, heightened by a long history of violence.¹⁵⁶ Although the court instructed the jury on self-defense, Sandra was convicted of first-degree murder.¹⁵⁷ She appealed this decision, claiming that the trial court erred in fail-

145. *Id.* at 1365-66.

146. The physical abuse, usually inflicted by "the board" or "the two-by-four," was also accompanied by constant and threatening verbal abuse, threats of death from his father, and sexually provocative behavior toward Dale by his mother. *See generally* Brief for Appellant at 4-19, *Whipple v. Duckworth*, 957 F.2d 418 (7th Cir.) (No. 91-1087) (discussing Dale's history of abuse), *cert. denied*, 113 S. Ct. 218 (1992).

147. *See id.* at 4, 19-23 (providing information on Dale's attempts to seek help).

148. *Whipple*, 523 N.E.2d at 1367. Dale's attorney argued for an instruction on self-defense based on the history of abuse and Dale's reasonable belief of imminent harm. *Id.* at 1366.

149. *Id.* at 1365. The jury was instructed on the verdicts of guilty, guilty but mentally ill, and not guilty by reason of insanity. *See* MONES, *supra* note 5, at 271. In explaining its verdict, the jury noted that it recognized Dale was not solely responsible for the act and its intention was that Dale receive treatment rather than a prison term. *See id.* at 272.

150. *Whipple*, 523 N.E.2d at 1365; *see also* MONES, *supra* note 5, at 274.

151. *Whipple*, 523 N.E.2d at 1366.

152. *Id.* at 1367.

153. *Id.*

154. 747 P.2d 560 (Ariz. 1987).

155. *See id.* at 561.

156. *Id.*

157. *See id.* at 561, 563.

ing to instruct the jury on the crime of manslaughter.¹⁵⁸ The Supreme Court of Arizona rejected this claim stating that no evidence existed to support an instruction on a lesser offense.¹⁵⁹

The decisions in *Whipple* and *Reid* are indicative of the unsatisfactory outcomes that result by blindly applying traditional legal doctrine. The evidence, on its face, objectively fell within the definition of first-degree murder and no allowance was made for self-defense claims or extenuating factors.¹⁶⁰ Approaches such as *Whipple* and *Reid*, like that in *Beard*, successfully satisfy the self-defense doctrine's objectives of preserving human life and limiting self-help, but fail to analyze or respond to the context in which the crimes occurred.

3. *Confronting the Issues: Self-Defense, Expert Testimony, Extenuating Circumstances*

In contrast to *Whipple* and *Reid*, the court in *Jahnke v. State*¹⁶¹ directly confronted the issues surrounding application of the self-defense doctrine, with expert testimony on the effects of child abuse to support such a claim, and recognition of a history of child abuse as a mitigating factor by which to reduce a charge of murder to one of voluntary manslaughter.¹⁶² In *Jahnke*, the defendant, sixteen year old Richard Jahnke, waited for his father to re-

158. *Id.* at 562.

159. *Id.* According to the court, evidence was insufficient to support a killing that was reckless, occurred in a heat of passion, or was adequately provoked. *Id.* Further, the state cross-appealed, claiming error in the lower court's instruction on self-defense. *Id.* at 563. The supreme court agreed with the state and held the instruction improper. *Id.* at 564. The court reasoned that because Sandra killed her father while he was sleeping, there could not have been a reasonable fear or "immediacy of physical danger." *Id.*

160. See *supra* note 10 (defining first-degree murder). In *Whipple*, the court made reference to, but did not focus on the tragedy of abuse and the failure of society to respond. The court stated:

We are cognizant of the tragedy experienced by the victims of battering relationships and all too frequent failure of social and law enforcement institutions to provide timely aid, comfort, and assistance to such victims. However, we are inescapably confronted here with conduct constituting the statutory offense of murder. The crimes cannot be condoned or excused on the basis of self-defense or defense of others.

Whipple v. State, 523 N.E.2d 1363, 1367 (Ind. 1988), *habeas corpus denied*, *Whipple v. Duckworth*, 957 F.2d 418 (7th Cir.), *cert. denied*, 113 S. Ct. 218 (1992). In *Reid*, the court stated that "[w]hatever might have occurred before the victim retired for the evening is immaterial." 747 P.2d at 562 (emphasis added).

161. 682 P.2d 991 (Wyo. 1984).

162. *Id.* at 993.

turn home and then shot and killed him as he emerged from the family car.¹⁶³ Richard was charged with first-degree murder.¹⁶⁴

At Richard's trial, his claim of self-defense centered around the many years of abuse inflicted by his father.¹⁶⁵ Based on this evidence and Richard's failed attempts to end the abuse, the trial court instructed the jury on self-defense, but excluded expert testimony which was meant to show the reasonableness of Richard's conduct.¹⁶⁶ The court concluded that the evidence did not satisfy the strict requirements of the self-defense doctrine, although the history of abuse Richard suffered did amount to an extenuating factor by which to reduce the offense charged.¹⁶⁷ Richard was adjudged guilty of voluntary manslaughter and sentenced to five to fifteen years in prison.¹⁶⁸

On appeal, Richard argued that the court had erred in excluding the expert testimony.¹⁶⁹ The Supreme Court of Wyoming disagreed and affirmed the opinion of the lower court,¹⁷⁰ stating that because there was no evidence of an actual or threatened assault, the reasonableness of Richard's conduct was not an issue and the expert testimony was properly excluded.¹⁷¹ One of two separate dissenting opinions provided a detailed and lengthy discussion on the merits of expert testimony and its use to support claims of self-defense for battered women and children who kill their abusers in non-confrontational situations.¹⁷²

Although the *Jahnke* case represents the emergence of dialogue concerning utilization of expert testimony on the effects of child abuse to support

163. *Id.* at 994-95.

164. *Id.* at 994. Richard and his sister, Deborah, were charged with conspiracy to commit murder as well. *Id.* Richard was found not guilty of this charge. *Id.* Deborah was convicted on this charge and was sentenced to up to eight years in prison, which was upheld by the Wyoming Supreme Court. In December, 1984, however, Governor Ed Herschler commuted her prison sentence and ordered her on probation for one year. *Mother Sees Future for Children Spared Sentence in Slaying*, N.Y. TIMES, Dec. 19, 1984, at D24; *see also infra* note 223 (referring to the June 1984 commutation of Richard's sentence).

165. *Jahnke*, 682 P.2d at 1018-25 (Rose, J., dissenting). Evidence showed that Mr. Jahnke had routinely and brutally beaten and emotionally abused his family, and had sexually abused Richard's sister. *Id.* Further evidence revealed that both children feared their father and had unsuccessfully attempted to seek help from their mother and local authorities. *See id.*; *see also* EWING, *supra* note 34, at 15.

166. *Jahnke*, 682 P.2d at 1002, 1004-05.

167. *See id.* at 994.

168. *Id.* at 994-95.

169. *Id.* at 995.

170. *Id.* at 1007.

171. *Id.*

172. *See generally id.* at 1011-44 (Rose, J., dissenting); *see also id.* at 1044 (Cardine, J., dissenting) (joining the dissent of Justice Rose in finding error in the exclusion of testimony).

claims of self-defense by defendants in parricide cases,¹⁷³ the court held that such testimony will not be admissible to support a self-defense claim in a non-confrontational situation.¹⁷⁴ Ultimately, the *Jahnke* majority, like the courts in *Whipple* and *Reid*, reasoned that the circumstances immediately surrounding the crime did not satisfy the elements of the self-defense doctrine.¹⁷⁵ Each court applied the strict requirements of the doctrine to the facts, and concluded that when no immediate threat is present at the time of the killing, a defendant is not justified in taking a human life, despite the fact that the defendant is a battered child and the victim is the batterer.¹⁷⁶

Apart from examining the issue of expert testimony, the *Jahnke* decision also differs from *Whipple* and *Reid* in that the court recognized the history of abuse suffered by the defendant and allowed for a reduction of the charge of murder to one of voluntary manslaughter. This result, advocated by scholars opposing the use of self-defense and expert testimony by battered defendants who kill their abusers in non-confrontational situations, recognizes both crimes by categorizing the abuse as an extenuating circumstance to reduce the offense, while preserving the intent of the self-defense doctrine by stressing the sanctity of human life and discouraging self-help.¹⁷⁷

4. Allowing Claims of Self-Defense and Expert Testimony

Confronted with the same controversial issues of self-defense and expert testimony as presented in the *Jahnke* case, an appellate court in the State of Washington recently released an unprecedented opinion overturning the conviction of a sixteen year old boy who admitted to killing his stepfather in *State v. Janes*.¹⁷⁸ As his stepfather walked through the front door of their home one day, the defendant, Andy Janes, shot and killed him.¹⁷⁹ Andy was charged with first-degree murder.¹⁸⁰

At trial, evidence demonstrated that Andy had been physically abused by his stepfather for almost ten years, and that the state's child protective serv-

173. The debate in the *Jahnke* opinions dealt with the battered children's perceptions of their abusive situations, the use of self-defense, and the use of expert testimony to support self-defense claims in non-confrontational situations. This closely corresponds with the debate surrounding battered women who kill. See *supra* text accompanying notes 112-22.

174. See *Jahnke*, 682 P.2d at 1007 (holding exclusion of the testimony as proper due to a lack of proof of imminent threat).

175. See *supra* text accompanying note 111; see also *supra* note 160 (discussing the *Whipple* and *Reid* decisions); *supra* note 174 (discussing the *Jahnke* decision).

176. See *Jahnke*, 682 P.2d at 1010 (Brown, J., concurring) (arguing that "[a]rming and barricading [oneself] and lying in wait for . . . [the victim's] return is not self-defense under the law").

177. See *supra* notes 119-31 and accompanying text.

178. 822 P.2d 1238, 1239 (Wash. Ct. App.), review granted, 832 P.2d 488 (Wash. 1992).

179. *Id.* at 1240.

180. *Id.*

ices organization had been aware of the abuse.¹⁸¹ The trial court refused to allow a claim of self-defense or expert testimony to support the claim because no imminent danger was shown to exist at the time of the killing.¹⁸² Andy was found guilty of second-degree murder and sentenced to ten years in prison.¹⁸³

On appeal, Andy argued that the court had erred in disallowing an instruction on self-defense and in excluding expert testimony to support the claim.¹⁸⁴ The appellate court held that imminence does *not* require an immediate threat and, therefore, the trial court erred in failing to allow the instruction and the expert testimony.¹⁸⁵ The case was remanded so that the jury could hear the testimony to better understand the effects of abuse on a child before specifically evaluating the reasonableness of Andy's actions and his claim of self-defense.¹⁸⁶ In deciding *Janes*, the Washington Court of Appeals, analogizing to cases in which battered women kill their abusers, became the first appellate court to recognize expert testimony in the context advocated by parricide defendants claiming self-defense in non-confrontational situations.¹⁸⁷

Similarly, in a recent case in Texas, seventeen year old Donna Marie Wisener had been physically, emotionally, and sexually abused by her father for approximately fourteen years.¹⁸⁸ After an argument with her father, Donna Marie retrieved his gun and killed him.¹⁸⁹ Donna Marie was charged with first-degree murder, and she offered evidence of prior abuse and expert testimony on the effects of the abuse to support a claim of self-defense.¹⁹⁰ However, in the *Wisener* case, the trial court allowed the testimony and, after the presentation of all evidence, acquitted Donna Marie of

181. *Id.* at 1240-41.

182. *Id.* at 1241.

183. *Id.* at 1240.

184. *Id.* at 1239.

185. *Id.* at 1241 & n.5 (emphasis added). The court stated that "there need be no evidence of an actual physical assault to demonstrate the immediacy of danger." *Id.* at 1241. Rather, the determination is based on a subjective standard using the defendant's "perceived imminence of danger." *Id.* at 1242 (citation omitted).

186. *Id.* at 1243-44.

187. See Mark Hansen, *Battered Child's Defense: Youths Who Killed Relatives Offer Evidence of Abuse with Mixed Results*, A.B.A. J., May 1992, at 28; David Margolick, *When Child Kills Parent, It's Sometimes to Survive*, N.Y. TIMES, Feb. 14, 1992, at D20.

188. See Hansen, *supra* note 187, at 28; Margolick, *supra* note 187, at A1.

189. Hansen, *supra* note 187, at 28; Margolick, *supra* note 187, at D20.

190. See Hansen, *supra* note 187, at 28; Margolick, *supra* note 187, at A1. A new Texas law permits a defendant charged with the murder or manslaughter of a family member to introduce evidence of a history of abuse, and expert testimony on the effects of the abuse. See Hansen, *supra* note 187, at 28; Margolick, *supra* note 187, at A1.

her father's murder,¹⁹¹ thus producing the outcome advocated by battered women and children charged with killing their abusers.¹⁹² In both *Janes* and *Wisener*, the courts accepted arguments that allowed expert testimony to prove the existence of an imminent threat when no immediate danger was present at the time of the killings, thereby permitting successful self-defense claims to be made in non-confrontational situations.¹⁹³

The foregoing cases, with the exception of *Jahnke*,¹⁹⁴ illustrate the extreme and unsatisfactory results that have been obtained in parricide cases. The approach followed in *Beard*, *Whipple*, and *Reid* fails to take into account all of the facts and circumstances surrounding the parricides, and emphasizes only the narrow goals of preserving human life and limiting self-help.¹⁹⁵ The *Janes* and *Wisener* decisions illustrate the opposite extreme. Allowing self-defense claims in non-confrontational situations, and expert testimony on the effects of abuse to support such claims, focuses primarily on the abuse inflicted on the defendants and defeats the purposes of the strict requirements of the self-defense doctrine.¹⁹⁶ Neither convictions of first-degree murder nor acquittals by reason of self-defense are appropriate, desirable, or effective in most parricide cases.

The *Jahnke* decision, on the other hand, appears to be a balanced approach that adheres to the objectives of the self-defense doctrine, while also making allowance for the context in which the crime occurred.¹⁹⁷ However, this balancing refers to the classification of the offense, not the type of sentence imposed. Before any determination is made regarding the appropriateness of a legal response, other considerations must be analyzed, evaluated, and applied.

191. Hansen, *supra* note 187, at 28; Margolick, *supra* note 187, at A1. Five other states permit such evidence by law, but only with regard to abused women. Hansen, *supra* note 187, at 28; Margolick, *supra* note 187, at A1.

192. See *supra* text accompanying notes 117-18.

193. See Hansen, *supra* note 187, at 28; Margolick, *supra* note 187, at D20. The court in *Janes*, which has recognized battered woman syndrome testimony to support claims of self-defense, recognized expert testimony on the effects of abuse on battered children as "the functional and legal equivalent of the battered woman syndrome." *State v. Janes*, 822 P.2d 1238, 1243 (Wash. Ct. App.), *review granted*, 832 P.2d 488 (Wash. 1992).

194. See *supra* notes 161-77 and accompanying text.

195. See *supra* text accompanying notes 120, 141-43; *supra* note 160 and accompanying text.

196. See *supra* text accompanying notes 109-11; *supra* notes 119-22 and accompanying text.

197. See *supra* notes 119-31 and accompanying text.

III. TOWARD A MORE APPROPRIATE LEGAL RESPONSE

The vast majority of abused children who kill abusive parents are convicted of murder or manslaughter, with acquittals a rarity.¹⁹⁸ After a conviction results, punishment is determined. The imposition of sentences will affect a much greater number of child abuse-parricide defendants than will the classification of the offense, as approximately ninety percent of parricide cases are resolved through the plea bargaining process rather than through criminal trials.¹⁹⁹ In parricide cases, while sentences range from no punishment at all to life in prison, the average sentence is approximately fifteen to twenty years imprisonment.²⁰⁰ Based on continued disparities in the crimes for which the defendants are convicted and the severity of the sentences imposed, pertinent societal goals and the role of the criminal justice system, as they relate to abused children who kill their abusers, must be identified before there is appropriate treatment in parricide cases.

A. *Prevailing Goals and Considerations*

1. *Societal Goals*

It has been widely recognized that children have a right to be safe in their own homes and to be free from physical, emotional, and sexual abuse.²⁰¹ Parents have a responsibility to care for and protect their children,²⁰² while society too must strive to protect them.²⁰³ If a parent abuses a child and violence continues to occur, society's short-term goals are to protect the

198. MONES, *supra* note 5, at 315.

199. CAMPBELL, *supra* note 25, at vii (asserting that, as a result, "for the vast majority of accused citizens and eventually for each judge, prosecutor, and defense counsel, sentencing looms as the major concern"); see Margolick, *supra* note 187, at D20 (citing that "[i]n 9 of 10 [parricide] cases, plea bargains are eventually struck"). These figures coincide with the figures for the disposition of all criminal cases. See LAFAYE & SCOTT, *supra* note 10, § 1.4(d) (approximating that ninety percent of all criminal cases are resolved by pleas of guilty rather than criminal trials). The plea bargaining process often results in an agreement between the defendant and prosecutor, whereby a defendant may plead guilty to: a lesser offense than that originally charged; one or some of the charges, with other charges being dropped; or, the offense charged and receive, in return, the recommendation of a lighter sentence. *Id.*

200. See MONES, *supra* note 5, at 315.

201. See *supra* notes 27-28 and accompanying text; *supra* text accompanying notes 42-46, 53-58; see also Van Sambeek, *supra* note 16, at 91 (stating that child abuse is a crime); Mitchell, *supra* note 15, at 1730 (stating that all persons have a right to safety and protection); Taylor, *supra* note 15, at 1725 (noting a person's right to physical safety).

202. John, *supra* note 1, § 13, at 413 n.60 (affirming that parents have a "primary responsibility" in caring for their children).

203. *Id.* (acknowledging that society is obligated to aid parents in this endeavor and, when parents fail, society must assume primary responsibility); see also Waits, *supra* note 104, at 304 (arguing that society is responsible for the protection of its citizens, in particular, those unable to protect themselves).

child and rehabilitate the abusive parent.²⁰⁴ Among the long-term goals of our society are the prevention of child abuse and the termination of the individual cycle of violence, so that the child may overcome physical and emotional difficulties, and not become a future victim of abuse or perpetrator of violence against others.²⁰⁵

The goals of combatting abuse must also be considered when adolescents who have not received societal protection take the lives of abusive parents. While parricide clearly accomplishes the short-term goals of protecting the child and deterring the abusive parent, it does nothing to address the long-term goals of preventing child abuse and ending the child's cycle of violence.²⁰⁶ Moreover, because a parricidal killing implicates a second crime, homicide, additional long-term societal goals of preserving human life and limiting self-help must be recognized.²⁰⁷ The competing goals relating to both child abuse and homicide must be balanced in fashioning an appropriate legal response to parricide defendants.²⁰⁸

While society plays a critical role in encouraging and deterring behavior, the criminal justice system is another mechanism that influences actions.²⁰⁹ When abuse has not been prevented and children subsequently take the lives of abusive parents, societal goals must be considered in the context of criminal justice jurisprudence in order to determine the appropriateness of a legal response.

2. *The Role of the Criminal Justice System*

According to LaFave and Scott, criminal law exists to protect society emphasizing "the prevention of the undesirable" over "the encouragement of the desirable."²¹⁰ In parricide cases, the "undesirable" includes both child abuse and homicide.²¹¹ In assessing the most effective means of preventing

204. See Waits, *supra* note 104, at 271, 303-05 (discussing goals of combatting abuse); see also *id.* at 304 (stating that "the law must strive to protect children").

205. See *id.* at 303; see also *id.* at 297-98 (mentioning effects of abuse on children and the intergenerational nature of abuse); *supra* notes 59-63 and accompanying text.

206. By killing the abusive parent, the child protects himself from that parent, obviously deterring the parent from inflicting further abuse. However, the killing does not specifically end the child's cycle of violence, see *supra* text accompanying notes 59-66, 93-97, or further the general long-term goal of preventing child abuse, see *supra* text accompanying notes 27-32, 205.

207. See *supra* notes 120-31 and accompanying text; see also Rosen, *supra* note 15, at 18 (observing that these are basic goals of criminal law); Creach, *supra* note 15, at 637 (noting society's overriding interest in limiting self-help).

208. See *supra* notes 206-07 and accompanying text.

209. LAFAVE & SCOTT, *supra* note 10, § 1.5.

210. *Id.*

211. See *supra* notes 204-08 and accompanying text; see also Van Sambeek, *supra* note 16, at 91 (noting that both child abuse and homicide are crimes). Discouraging these "un-

these "undesirables," it is important to understand the role of both criminal law and the criminal justice system in society.

Several generally accepted theories on this subject have been developed including: individual deterrence,²¹² restraint,²¹³ rehabilitation,²¹⁴ general de-

desirables" is analogous to the societal goals of preventing child abuse and the taking of human life. See *supra* text accompanying notes 206-08.

212. The theory of individual deterrence or prevention purports to modify the behavior of the individual who has committed a crime "by giving him an unpleasant experience he will not want to endure again" in order to ensure that the offender refrains from committing such crimes in the future. LAFAVE & SCOTT, *supra* note 10, § 1.5(a)(1). As discussed in the child abuse-parricide profile, children who take the lives of their abusive parents have suffered unpleasant experiences for most of their lives. See *supra* text accompanying notes 80-82, 87-88. It is to escape those "unpleasantries" that most children commit the acts against the abusers. See, e.g., *Jahnke v. State*, 682 P.2d 991, 1018-25 (Wyo. 1984) (Rose, J., dissenting); see also *supra* note 89 and accompanying text. Moreover, most of these children pose no threat to society at large. See *supra* text accompanying notes 75-78. As a result of the parents' deaths, the threats no longer exist and the children normally feel safe and free, even if confined to prison. See *supra* text accompanying note 93; *supra* note 95; see also MONES, *supra* note 5, at 246 (quoting a child abuse-parricide defendant comparing prison life with home life). In parricide cases, therefore, sentencing a child or adolescent to prison would likely defeat the objective of the prevention theory. See, e.g., *People v. Cruickshank*, 484 N.Y.S.2d 328, 338 n.5 (App. Div. 1985) (noting that "the deterrent effect of a harsh sentence is questionable"), *aff'd*, *People v. Dawn Maria C.*, 490 N.E.2d 530 (N.Y. 1986); see also Van Sambeek, *supra* note 16, at 105 (arguing that a parricide defendant is generally "not a recidivist and does not need punishment to discourage him or her from committing another crime").

213. Restraint is aimed at incarcerating or isolating the offender in order to protect the general public from dangerous persons with a history of criminal conduct. LAFAVE & SCOTT, *supra* note 10, § 1.5(a)(2). Moreover, "[t]he most reliable indicator of the likelihood of future criminality is the number of prior contacts a youth has with police and the courts." Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 706 n.74 (1991) (citation omitted). While each parricide case must be decided on a case-by-case basis, the profile of abused children who kill abusive parents generally indicates that the youths have no prior criminal history and pose no threat to society at large. See *supra* text accompanying notes 75-78. Rather, these children are usually "good" children and unique in that they respond not to innocent persons, but to parents who have inflicted severe and continuous abuse. See *supra* text accompanying notes 75-89. The available evidence suggests that blindly restraining, incarcerating, or isolating abused children who kill abusive parents typically will not further the goal of protecting the general public. For example, see the case of Andrew Chi, discussed *infra* notes 237-40 and accompanying text; *Cruickshank*, 484 N.Y.S.2d at 337-38 (explaining that "the traditional purposes for sentencing would not be served by . . . an indeterminate term of imprisonment") (citation omitted); see also Van Sambeek, *supra* note 16, at 105 (arguing the restraint theory is not served by convicting a parricide defendant to prison).

214. The object of rehabilitation is to ensure that the person committing the crime is reformed through proper treatment, and may be returned to society if and when he or she is no longer a threat. LAFAVE & SCOTT, *supra* note 10, § 1.5(a)(3).

The rehabilitation theory rests upon the belief that human behavior is the product of antecedent causes, that these causes can be identified, and that on this basis therapeutic measures can be employed to effect changes in the behavior of the person treated.

Id. The child abuse-parricide profile demonstrates that abuse may be identified as the antecedent cause which triggers the children's behavior. See *supra* text accompanying notes 67, 70, 80-82, 88-89. Studies also reveal that the individual cycles of violence may be overcome if recognized and treated, as most of the youths are amenable to treatment. See *supra* notes 93-

terrence,²¹⁵ education,²¹⁶ and retribution.²¹⁷ From what is known of the context in which parricides occur, the most pertinent theories are rehabilita-

97 and accompanying text. Further, it is when the children are not treated and the cycle of violence is not permanently broken that the threat may be realized through future participation in a battering relationship, as victim or perpetrator. See *supra* text accompanying notes 59-66, 204-05. Rehabilitation, therefore, may be successful in providing positive and effective experiences and results for both the children and society. See, e.g., *Cruickshank*, 484 N.Y.S.2d at 337 (asserting that based on the evidence, rehabilitation for the defendant seems likely to be successful); see also discussion of child-abuse parricide defendant Bobby Stanberry, *infra* text accompanying note 233; Van Sambeek, *supra* note 16, at 104 (noting that conviction does not further the goal of rehabilitation for these children).

215. Under a deterrence theory, the punishment of the offender is meant to deter other members of society from committing that particular crime by imposing the threat of like treatment. LAFAYE & SCOTT, *supra* note 10, § 1.5(a)(4). Most parricide cases encompass crimes of child abuse and homicide, and based on the stated societal goals, it is important that both be recognized and deterred. See *supra* text accompanying notes 201-08; cf. Van Sambeek, *supra* note 16, at 105 (arguing that deterrence is not critical for parricide, as other abused children will not begin committing murders if the child is not punished).

216. LaFave and Scott describe the theory of education as serving as a device "to educate the public as to the proper distinctions between good conduct and bad," with punishment especially important for "crimes which are not generally known, often misunderstood, or inconsistent with current morality." LAFAYE & SCOTT, *supra* note 10, § 1.5(a)(5), at 25. Again, based on societal goals, the desired message under a theory of education is twofold: neither abuse nor the taking of a life is to be readily condoned. See *supra* notes 206-08 and accompanying text. However, the taking of human life is generally known as "bad" while child abuse is not so clearly defined or understood. See *supra* notes 27-32 and accompanying text; see also Van Sambeek, *supra* note 16, at 90 ("Child abuse is a very disturbing subject and most people would rather not acknowledge it . . . [while] parricide is an especially shocking crime."). Therefore, when a child kills an abuser and is convicted of first-degree murder with a lengthy prison term, with no message being sent to those who abuse, then society, in effect, continues to defend and allow child abuse. See MONES, *supra* note 5, at 313; see also *supra* note 51.

217. The goal under the theory of retribution is to impose punishment in order to obtain revenge, or to punish one person for inflicting harm on another. LAFAYE & SCOTT, *supra* note 10, § 1.5(a)(6). This theory is based on the proposition that a person should take responsibility only for that which he is culpable. See *id.* § 1.5 (a)(6), at 26 n.43. In addition, the United States Supreme Court has stated that youth is "a time and condition of life when a person may be most susceptible to influence and to psychological damage," and such individuals "generally are less mature and responsible adults." *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982). Parricide cases most often include adolescents who have been consistently and severely abused by a parent, and failed by family, friends, or the social service and criminal justice systems. See MONES, *supra* note 5, at 319 (delegating responsibility and stating that many persons are responsible for the children's actions); see also *supra* text accompanying notes 80-82. Based on the circumstances under which parricidal killings typically occur, responsibility must be borne by all culpable parties. See, e.g., *Cruickshank*, 484 N.Y.S.2d at 337 (stating that the defendant's act was "brought about through no fault of her own") (emphasis added); see also *supra* text accompanying notes 96-97. Compare *Whipple v. State*, 523 N.E.2d 1363 (Ind. 1988), *habeas corpus denied*, *Whipple v. Duckworth*, 957 F.2d 418 (7th Cir.), *cert. denied*, 113 S. Ct. 218 (1992) (convicting defendant of first-degree murder, merely acknowledging the abuse inflicted by the parents and failed attempts to seek help) with discussion of Donna Wisener, *supra* text accompanying notes 188-93 (granting complete acquittal based on the defendant's history of abuse and its affects).

tion, education, and retribution.²¹⁸ These criminal justice theories, coupled with societal goals, dictate that courts must balance the desire to prevent child abuse and end the individual cycle of violence against the desire to preserve human life and discourage self-help when applying legal doctrine and imposing sentences.²¹⁹

B. Combining Data, Theory, and Goals

While the *Jahnke* decision balances competing goals in its classification of the offense, the case is illustrative of a court stopping short in its balancing considerations. After the jury found Richard guilty of voluntary manslaughter, the trial judge sentenced him to serve five to fifteen years in prison.²²⁰ On appeal, although Richard argued that the court had abused its discretion in imposing this sentence,²²¹ the Wyoming Supreme Court af-

218. See *supra* text accompanying notes 72-97; *supra* notes 212-17.

219. See *supra* notes 198-218 and accompanying text; see also CAMPBELL, *supra* note 25, §§ 2:1-2:5 (analyzing the theories of deterrence, restraint, rehabilitation, and retribution as sentencing rationales).

220. *Jahnke v. State*, 682 P.2d 991, 994-95 (Wyo. 1984).

221. *Id.* at 1008. In an analogous case, a trial court recognized a history of abuse as an extenuating factor by which to reduce a charge of murder but the resulting sentence included only a prison term. In *Cruickshank*, the defendant, Dawn Cruickshank, shot and killed her father, and was charged with second-degree murder. 484 N.Y.S.2d at 332. At her trial, Dawn testified to a history of numerous violent acts and incidents of sexual abuse, and evidence demonstrated that Dawn "feared her father would sexually abuse her on the night of the shooting." *Id.* The jury ultimately found Dawn guilty of first-degree manslaughter, and the judge sentenced her to two and one-third to seven years in prison. *Id.* On appeal, Dawn argued that the trial court erred in failing to grant her youthful offender status. *Id.* at 336. The court noted that the pertinent statute allowed for youthful offender status when "'the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years.'" *Id.* (citation omitted). The appellate court reversed the lower court, vacating the conviction and adjudicating Dawn a youthful offender. *Id.* at 337. In its decision, the court suggested that Dawn's act was not justified and that the offense was an "extremely serious, violent crime." *Id.* at 336. However, the court considered several mitigating factors: Dawn had no criminal record or history of violent behavior, she was known as a good and honest individual, having respect for law and authority, she had cooperated with the police, and felt remorse for her actions. *Id.* at 336-37. The court also recognized that Dawn was amenable to treatment. *Id.* at 337. The court concluded that a prison sentence would be counterproductive, as well as physically and emotionally dangerous. *Id.* at 338. The decision was reversed "as a matter of discretion in the interest of justice," *id.* at 339, and was remitted for the trial court to determine "a reasonable definite term of incarceration along with a probationary period which includes the necessary counseling," *id.* at 338. On remand, the judge re-sentenced Dawn to five years probation and ordered the continuance of counseling. See Carol DeMare, *Sentence Revealed to Public: Cruickshank on Probation*, ALB. TIMES UNION, Feb. 11, 1988, at B1. This case provides an example of a court performing the proper balancing techniques, and moving toward an appropriate legal response. See *supra* text accompanying notes 201-19; see also *infra* text accompanying notes 224-43.

firmed the lower court.²²² While the lower court apparently understood and recognized the history of abuse by viewing it as an extenuating circumstance by which to reduce the charge of murder to voluntary manslaughter, the court did not appropriately weigh all necessary factors in imposing the sentence.²²³

Other courts have been more successful in moving toward an appropriate legal response by taking enlightened approaches that more adequately and effectively balance competing interests. In so doing, such courts have recognized child abuse as an extenuating factor allowing for reduction of the offense charged, but have gone further to impose creative, yet positive sentences to respond to the parricide convictions. These cases exemplify the manner in which the competing interests of the individual, society, and criminal justice system may come together in order to produce a more appropriate legal response.

In *State v. Stanberry*,²²⁴ the court considered extenuating circumstances in order to reduce the crime for which the defendant was charged.²²⁵ Seventeen year old Bobby Stanberry was charged with murder after he shot and killed his father as he slept.²²⁶ The judge stated that while the case seemed to be a simple case of first-degree murder, the testimony indicated otherwise.²²⁷ It was established at the non-jury trial that Bobby had been physically, emotionally, and sexually abused by his father,²²⁸ had twice tried to commit suicide, and had run away from home five times.²²⁹ After examining the entire context of the crime and focusing on the abuse,²³⁰ the trial judge reduced the charge, convicting Bobby of voluntary manslaughter.²³¹ The judge stated that "neither a murder conviction nor an acquittal will

222. *Jahnke*, 682 P.2d at 1009. There was also a separate concurring opinion by Justice Brown. See *id.* at 1009-11 (Brown, J., concurring).

223. Instead, the court focused too heavily on retribution, and failed to respond to the individual cycle of violence. See *supra* notes 205-06, 212-19 and accompanying text. Subsequently, in June, 1984, Richard's sentence was commuted to three years by Governor Ed Herschler. The Governor's order was premised on Richard undergoing a 60-day psychiatric treatment and evaluation. *Youth Who Killed Abusive Father Has Term Cut*, N.Y. TIMES, June 16, 1984, at A6.

224. No. 90-1022 (Md. Cir. Ct. Mar. 28, 1991).

225. *Id.* at 2-3.

226. Paul Duggan, 'Black Letter of the Law' Softened to Gray by Judge, WASH. POST, Sept. 1, 1991, at B1.

227. See *Stanberry*, No. 90-1022, slip op. at 1-2.

228. *Id.* at 3-4. Bobby had lived in constant fear of his father and had an anxiety disorder and organic brain damage as a result of the beatings. *Id.* at 4.

229. *Id.* at 5. Bobby's mother, family, friends, the police, and social service workers were all aware of the abuse, but Bobby was repeatedly returned home where further beatings occurred. *Id.*

230. See generally *id.* at 1-6.

231. *Id.* at 6.

satisfy the law, the facts, nor social purpose."²³² As a result, the judge imposed a suspended prison sentence of eight years, placed Bobby on probation, and ordered that he participate in a program for emotionally disturbed children for two years in order to get him "back on track."²³³

Also illustrative of the more appropriate handling of a parricide case is that of eighteen year old Robert Lee Moody. Moody was charged with murder for the shooting death of his father.²³⁴ After the court heard evidence of the father's brutal abuse of his family, the charge was reduced and Robert was convicted of voluntary manslaughter.²³⁵ Upon conviction, the judge ordered psychiatric counseling, imposed a four year suspended prison term, placed Robert on five years probation, and ordered him to spend a minimum of two years working abroad.²³⁶

Another example of creative sentencing occurred in the case of Andrew Chi. Andrew was charged with the stabbing death of his father, and pleaded guilty to second-degree murder.²³⁷ After hearing all evidence, the judge described Mr. Chi as a "psychological beast" who inflicted "terrible, terrible psychological torture" on his wife and son.²³⁸ The judge made a determination that placing Andrew in jail would accomplish nothing.²³⁹ Instead, the

232. *Id.*

233. See Duggan, *supra* note 226, at B8. This case differs from many parricide cases in that Bobby suffered brain damage and was in desperate need of psychiatric treatment. In other cases, there is no apparent brain damage, and judges, therefore, take other approaches in determining punishment and/or therapy. See *infra* text accompanying notes 234-40.

234. See EWING, *supra* note 34, at 16.

235. See *id.* Evidence demonstrated Robert's father had abused his family for several years; sexually abusing his daughter, forcing his wife to become a prostitute, and urging Robert to partake in pornographic activity and drug usage. *Id.* On the day of the murder, Robert had witnessed his father repeatedly shove his mother's head into a kitchen appliance. See *id.* Robert called the police, but when they arrived his mother would not press charges. *Id.* It was later that day that Robert killed his father. See *id.* at 17.

236. *Id.* The fact that Robert was a born-again Christian influenced the judge's final decision to have Robert work as a Christian missionary. See *id.* at 16-17; see also Aric Press & Daniel Pedersen, *Sentence by Public Opinion?*, NEWSWEEK, Mar. 5, 1984, at 58, 58 (reporting that the judge received approximately seven hundred letters of suggestion for sentencing, only a few of which recommended a prison term). Here, it is important to note that the inclusion of a religious aspect to the order of community service was solely at the request of the defendant, thus avoiding any First Amendment concerns. Letter from Eric E. Younger, Judge, Los Angeles County Superior Court, to Susan C. Smith, Note & Comment Editor, *Catholic University Law Review* 3 (July 18, 1992) (on file with the *Catholic University Law Review*).

237. See Tom Vesey, *Probation Ordered for Honors Student Who Killed Father*, WASH. POST, Feb. 17, 1983, at B1.

238. See Meyer, *supra* note 83, at 16. This case is unique as it involved only emotional abuse. However, its purpose in this context is to demonstrate how any singular type of abuse, or combination of, may be considered detrimental. Furthermore, when balancing proper goals in order to find appropriate solutions, creative and positive sentencing should be encouraged. This case provides such an example.

239. See *id.*

judge placed Andrew on probation and ordered him to perform eight hundred hours of community service, teaching reading, writing, and arithmetic to prisoners in a county jail.²⁴⁰

The *Stanberry*, *Moody*, and *Chi* decisions are significant in that they represent a shift away from the traditional treatment of parricide cases toward a more appropriate legal response. Like *Jahnke*, each court acknowledged the brutality that drove the child to commit the crime and allowed for the reduction of the murder charge. More importantly, the trial courts each performed a sensitive analysis and imposed a well-reasoned sentence that provided a positive legal response to the child abuse-parricide defendant. The verdicts in these cases more adequately and effectively address the competing interests of the individual defendant and society, in a manner consistent with the role of the criminal justice system.²⁴¹

C. A Balanced Response

The parricide cases discussed throughout this Comment present very similar fact patterns that closely resemble the child abuse-parricide profile.²⁴² Traditional analyses of such cases, resulting in convictions of first-degree murder and severe sentences, demonstrate how society and the criminal justice system have not been equipped to deal adequately with many of these children, their underlying problems, or the desired solutions.²⁴³ As a result, outcomes often remain undesirable, unjust, and ineffective. Conversely, many battered children who kill abusive parents argue for sensitive analysis of the context in which the crimes occur in order to support claims of self-defense, a complete defense for their actions.²⁴⁴ By allowing testimony to place battered children within the purview of the self-defense doctrine when no imminent harm is present, the goals of the doctrine itself, society, and the criminal justice system are ill-served.²⁴⁵ Although the appropriateness of the classification of the offense and the severity of the sentence will depend on the facts of the individual case, evidence demonstrates that neither convictions of first-degree murder with lengthy prison terms nor acquittals by

240. See Vesey, *supra* note 237, at B1. Andrew had been an honor student at Cornell University. The judge determined that Andrew and society as a whole would best be served by ordering community service. See *id.*

241. See *supra* notes 205-08, 212-19, and accompanying text.

242. See *supra* notes 144-93, 224-40 and accompanying text; *supra* note 221; see also *supra* text accompanying notes 72-97.

243. See *supra* notes 136-60, 195 and accompanying text.

244. See *supra* text accompanying notes 109-18, 132-35, 178-93 (discussing claims by battered women and children defendants).

245. See *supra* text accompanying notes 109-11; *supra* notes 119-22 and accompanying text.

self-defense are likely to succeed in meeting the interests of the individual, society, or criminal justice system.²⁴⁶ Therefore, a balance is necessary.

Successful balancing techniques have been employed in classifying offenses and determining sentences.²⁴⁷ When the crimes are viewed in their entire context, most parricide cases contain extenuating circumstances sufficient to justify the reduction of a charge of first-degree murder to voluntary manslaughter.²⁴⁸ With voluntary manslaughter as the crime,²⁴⁹ both child abuse and homicide are appropriately recognized and discouraged.²⁵⁰ Moreover, extenuating factors must also be considered in determining an appropriate sentence. In most parricide cases, ordering a suspended prison term with a period of probation, combined with community service work and psychiatric therapy, is a positive and well-reasoned response.²⁵¹ This type of sentencing addresses both crimes, requiring that the children take responsibility for their own actions, yet allowing them to interact positively with society and obtain necessary treatment.²⁵² Approaching parricide cases in this fashion permits courts to reach more appropriate responses in these most difficult cases.

IV. CONCLUSION

When victims of child abuse take the lives of their abusers, society often criticizes these victims for not stepping back, analyzing the situation, and finding more appropriate solutions to deal with their problems. Before society judges these victims, it too must step back and analyze the context in which the crimes occur, and the goals to be achieved in order to provide meaningful solutions. Historically, due to the non-recognition of intrafamilial violence and the dearth of information regarding child abuse and parricide, society has been ill-equipped to deal effectively with such matters. In light of successful efforts, largely on behalf of battered women, to isolate and understand the roots and severity of the problems of abuse, society is now in a much better position to aid in the prevention, intervention, and correction of such tragedies.

246. See discussion *supra* notes 195-219 and accompanying text.

247. See case discussion *supra* note 221; discussion *supra* text accompanying notes 224-41.

248. See generally *supra* notes 67-88, 123-31 and accompanying text.

249. For ways in which this could be accomplished, see *supra* note 130.

250. See *supra* notes 130-31, 205-08, 211-19 and accompanying text.

251. See *supra* note 221; *supra* notes 224-40 and accompanying text. See generally CAMPBELL, *supra* note 25, §§ 3:5, 5:1-5:6 (discussing the sentencing alternatives of community service and probation); *supra* text accompanying notes 93-96 (emphasizing the need for providing therapy).

252. See *supra* notes 93-97, 205-19 and accompanying text.

When efforts to prevent, intervene, and correct these problems are unsuccessful and abused children take the lives of abusive parents, the legal system, at a minimum, must analyze the causal relationship between child abuse and parricide. Blindly prosecuting and punishing these children, when the crime would probably not have been committed had society responded to the abuse,²⁵³ ignores the societal and individual problems of child abuse, elevating one set of societal goals over another. Moreover, acquitting such individuals based on societal failures and the threat of continued abuse ignores the sanctity of human life.²⁵⁴ Both approaches result in extreme solutions that are undesirable, unjust, and ineffective.

A balanced approach of weighing the desire to prevent child abuse and end the individual cycle of violence against the desire to preserve human life and discourage self-help is possible. Classifying parricidal killings as voluntary manslaughter rather than first-degree murder acknowledges the criminal nature of both child abuse and homicide, striking an appropriate balance among identifiable societal goals that are consistent with criminal justice theories. Upon a finding of guilt, whether by trial or plea, courts must then utilize pertinent data to fashion appropriate sentences that will ultimately benefit not only the individual child abuse-parricide defendants, but society and the criminal justice system as well.

Susan C. Smith

253. See Buda & Butler, *supra* note 15, at 368 (noting the irony in a system that chooses a non-interventionist attitude to deal with problems of abuse, then prosecutes and severely punishes an abuse victim subsequently resorting to self-help).

254. See *Jahnke v. State*, 682 P.2d 991, 997 (Wyo. 1984) (observing that "[a]lthough many people, and the public media, seem to be prepared to espouse the notion that a victim of abuse is entitled to kill the abuser that special justification defense is antithetical [sic] to the mores of modern civilized society").